

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

REDDY VIJAY ANNAPPAREDDY)
Plaintiff,) Trial Day 6
vs.) Civil No.
PAM ARNOLD, et al.) 18-cv-3012-JFA
Defendants.) Baltimore, Maryland
June 7, 2023
9:30 a.m.

THE ABOVE-ENTITLED MATTER CONTINUED FOR
BENCH TRIAL
BEFORE THE HONORABLE JOSEPH F. ANDERSON, JR.

A P P E A R A N C E S

On Behalf of the Plaintiff:

JOSHUA D. GREENBERG, ESQUIRE
KOBIE FLOWERS, ESQUIRE

On Behalf of the Defendant United States of America:

MATTHEW P. PHELPS, ESQUIRE
MOLISSA H. FARBER, ESQUIRE
LAWRENCE EISER, ESQUIRE

Also Present:

Reddy Vijay Annappareddy

(Computer-aided transcription of stenotype notes)

Reported by:

Ronda J. Thomas, RMR, CRR
Federal Official Reporter
101 W. Lombard Street, 4th Floor
Baltimore, Maryland 21201

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1 (9:30 a.m.)

2 **THE COURT:** Good morning, be seated.

3 All right. Before we call the first witness, my law clerk
4 informed me that the arrangements have been made to have the
5 California expert here on Monday afternoon.

6 **MR. GREENBERG:** Yes, Your Honor. Professor Fassett
7 was able to change his arrangements and will be available.
8 He's coming from Spokane in Eastern Washington and traveling
9 across country, and he'll be here Monday to testify in the
10 afternoon.

11 **THE COURT:** If I count correctly, we have five
12 witnesses next week and four and a half days to cover five
13 witnesses. I just want to be sure we can make that work.

14 **MR. GREENBERG:** I certainly think we will have ample
15 time based on the time estimates we've gotten from the other
16 side.

17 **THE COURT:** Well, let me just say, better come
18 prepared to have long days, if necessary. 9:00 to 6:00 maybe a
19 day or two, if necessary.

20 **MR. GREENBERG:** We will stay as long as Your Honor
21 wants.

22 **THE COURT:** Now, understand, I'm here today, tomorrow,
23 and Monday if you need me. But we'll work around the
24 witnesses' schedules. All right.

25 My law clerk also said that we need to straighten out an

1 exhibit that was corrected and we want to put the corrected
2 exhibit in the record.

3 And the Government wants the original exhibit to stay in
4 the record also, right?

5 **MR. GREENBERG:** Your Honor, I cited the transcript in
6 the email I sent to Mr. Miller. This was the issue when I was
7 writing on the easel and the handwriting was rather illegible,
8 and Your Honor requested a cleaned up copy, which is what I
9 provided.

10 **THE COURT:** That's Exhibit 150.

11 **MR. GREENBERG:** Yeah. And the bottom left table for
12 Norvir tablets is what was -- has the highlighted numbers
13 changed -- sorry, the highlighting shows the changes in the
14 numbers.

15 **THE COURT:** I see that.

16 And the Government wants to put a statement on the record?

17 **MR. PHELPS:** Yes, Your Honor. I had asked that
18 Mr. Greenberg highlight the changes and not just provide a new
19 spreadsheet. Mr. Smith testified on cross that there were
20 three errors in the spreadsheet and not two. There are only
21 two errors highlighted on the spreadsheet that was submitted
22 last night. There is a third change in the spreadsheet that
23 was not highlighted, and I wanted to recognize that.

24 The quantity of Prezista tab 400 milligrams at Pharmacare
25 at GBMC has been completely eliminated from the original

1 exhibit. It had figures of a shortage of 420 and a surplus of
2 420 --

3 **THE COURT:** It doesn't even appear on this new
4 exhibit.

5 **MR. PHELPS:** And it doesn't even appear on the new
6 exhibit.

7 **THE COURT:** I'm looking for it, that's why I didn't
8 find it. Okay.

9 **MR. GREENBERG:** That was an oversight. We can provide
10 another --

11 **MR. PHELPS:** We don't need another one. I put a
12 statement on the record. It's fine.

13 **THE COURT:** That's fine. We understand. We
14 understand.

15 All right. Assuming we finish with this witness with some
16 room to go this afternoon, I'd like to hear debate on the
17 admissibility of these 302 statements that has been briefed and
18 take up any other legal or housekeeping matters that we can so
19 we can hit the ground running next week. All right?

20 **MR. GREENBERG:** Yes, Your Honor.

21 **THE COURT:** Please call your next witness.

22 **MR. FLOWERS:** The Plaintiff calls Mr. Ernest McCray.

23 (Witness enters.)

24 **MR. PHELPS:** Your Honor, we've maintained objections
25 for these witnesses who have not been previously disclosed on

1 the witness list, and I just wanted to note for the record that
2 we object to the witness being called.

3 **THE COURT:** All right. You have the objection on
4 appeal.

5 **THE CLERK:** Sir, please remain standing and raise your
6 right hand.

7 (Witness sworn.)

8 **THE CLERK:** You may be seated, sir.

9 And for the record, could you please state and spell your
10 first and last name.

11 **THE WITNESS:** Ernest McCray. First name is
12 E-r-n-e-s-t. Last name McCray, M-c-c-r-a-y.

13 **THE CLERK:** Thank you.

14 - - -

15 **DIRECT EXAMINATION**

16 - - -

17 **BY MR. FLOWERS:**

18 **Q.** Mr. McCray, good morning, sir.

19 **A.** Good morning.

20 **Q.** Mr. McCray, can you please tell Judge Anderson where you
21 are currently employed.

22 **A.** Currently, I'm employed with William T. Burnett through
23 the STX division.

24 **Q.** Please explain, just briefly, what is William T. Burnett
25 and your employment through the STX division?

1 A. William T. Burnett is actually the company overall, family
2 business in manufacturing and fabrications of phone. And
3 depending on what division or what branch you work at, as of
4 myself with STX, we deal with lacrosse and field hockey
5 material.

6 Q. And what's your job title, Mr. McCray?

7 A. Warehouse associate.

8 Q. Very well.

9 How long have you worked as a warehouse associate at
10 William T. Barnett in the STX division?

11 A. A little over a year now, about 14, 15 months.

12 Q. And before you worked in that position, what was your
13 previous job, sir?

14 A. Operator. Machine operator.

15 Q. Were you a machine operator at STX?

16 A. There is no -- that's -- that's just strictly just more so
17 putting together materials. The division that I came from in
18 Jessup of William T. Burnett, that's where the manufacturing --
19 phone manufacturing division is dealt with.

20 Q. Before you were working for William T. Burnett in STX,
21 what was your previous job?

22 A. I was a behavior aide at NCIA, which is a company that
23 works with adults with disabilities.

24 Q. When you were in this position as a behavior aide, what
25 years were you in that position?

1 A. Yes. I came there March 17th, 2017, until June the 1st,
2 when I began with William T. Burnett.

3 Q. That's June the 1st?

4 A. I'm sorry, June 1st, 2019.

5 Q. Can you explain to the judge where you worked before that
6 position as a behavior aide in 2017?

7 A. Simultaneous, but it just overlapped, I was also with The
8 Children's Home in Catonsville, Maryland. And that is more so
9 a group home for juveniles, ages 12 to 20. I started there
10 somewhere in August of 2014 and that all the way until my
11 demise, I guess you could say, there, which was in April of
12 2019.

13 I've maintained two jobs since 2014. So some jobs are
14 going to overlap because I've always kept two jobs.

15 Q. Very well, Mr. McCray.

16 I just want to be clear of your time at that group home.
17 That was about August 2014 until when?

18 A. Until I was let go in April of 2019.

19 Q. When you say you were "let go in April of 2019," what do
20 you mean by that, sir?

21 A. In that position, when you're direct care -- I'll never do
22 it again -- in that kind of business, the clients, as we will
23 refer to them, whatever happens with them, even if you're not
24 directly involved in it, if you are a part of that shift, you
25 can be blamed for it. So in that particular, should I say

1 demise, we had three young ladies that AWOL'd [sic], or in
2 layman's terms, escaped. Because even though it is an open
3 facility, it is not locked in and we do have one unit for
4 girls, aging, again, anywhere from 12 to 20. But these young
5 ladies are in the diagnostic center. They do not come out for
6 anything other than home visits. So school, lunch, breakfast,
7 dinner, tutoring, anything of the such is done there at the
8 facility. It is locked, it is caged. It has a high fence.

9 But one particular night there, when I came in -- because
10 that night I was acting as grounds supervisor and because,
11 again, that is -- grounds supervisor, anything that goes on,
12 directly or not, I'm held responsible for it. So because of
13 those girls' demise and the parents wanting answers as to where
14 their children are, even though they probably knew where they
15 were, myself, along with the other three staff that actually
16 worked in the unit that night, we were all, as I see, CYA, was
17 let go.

18 Q. Thank you for explaining that to Judge Anderson.

19 I now want to take you, I think, back to -- almost to
20 Pharmacare from August of 2014 looking backward, what was your
21 next employment?

22 A. Prior to that, it would be as a delivery driver with
23 Pharmacare pharmacy.

24 Q. And when did you first become a delivery driver at
25 Pharmacare pharmaceuticals?

1 A. November of 2009.

2 Q. Right. And I think we said Pharmacare pharmaceuticals, I
3 meant to say Pharmacare pharmacy; is that fair to say?

4 A. You can say that, because I didn't actually use --
5 pharmaceuticals always. When I think pharmaceuticals, I think
6 more of material, more probably, like, maybe wheelchairs and
7 oxygen equipment or such. But I figure, you know, maybe that
8 is a better term, because then you can incorporate medications
9 under that umbrella, too.

10 Q. Whatever term you want to use, whatever is the truthful
11 and most accurate term, that's all we're searching for here,
12 Mr. McCray.

13 Let me ask you, when you started working at Pharmacare, I
14 believe you said in 2009?

15 A. Correct, November of 2009.

16 Q. November of 2009.

17 When did you stop working for Pharmacare?

18 A. The same time that everybody stopped, during the raids or
19 shutdowns or what have you, such, in July of 2014.

20 Q. All right. When you say Pharmacare was shut down, again,
21 can you just explain to Judge Anderson, what you mean by that.
22 In July of 2013.

23 A. '13, sorry, sorry, '13. I'm mixing up the years, it's
24 been so long ago.

25 In a sense, I come to work one day, as I normally would,

1 and we were just surrounded by FBI agents, state trooper
2 agents. And for the first time ever, I haven't seen those
3 letters HHS and investigations. And, again, I use the term
4 "raid," because that's -- where I come from, that's the
5 layman's terms of what we say, the raids and shutdowns of --
6 whether it been the pharmacies or homes or things of that such
7 of employees. So that was my actual, I guess, last day of
8 employment.

9 Q. Very well, Mr. McCray.

10 Just a few more questions about your background and then
11 we'll get into your time at Pharmacare.

12 Can you explain to the Court where you come from, I think
13 you mentioned that in your previous answer. Please explain to
14 Judge Anderson exactly where Mr. McCray comes from.

15 A. Born and raised here in Baltimore City. I come from
16 West Baltimore. Branch, should you say, of Baltimore. Never
17 lived outside of the state. I did live outside of the city
18 briefly for a little over a year in Dundalk, but that was,
19 again, 2019 to 2020. Not relevant here.

20 Just a hard-working person here in Baltimore City, trying
21 to get out of it.

22 Q. Mr. McCray, Judge Anderson has come to join us from
23 South Carolina, so he doesn't know a lot about Baltimore.

24 A. Okay.

25 Q. Can you explain to Judge Anderson a little bit about the

1 socioeconomic status of West Baltimore versus other parts of
2 Baltimore.

3 A. West Baltimore, certain parts is impoverished,
4 underdeveloped, as is probably well documented through news
5 broadcasts, you know, mainly mines is Fox 45. A lot of
6 underprivileged children, maybe not the best education system,
7 as we are seeing currently right now being played out in some
8 of the Fox project Baltimore stories. But, again, you have
9 great, hardworking people there, though, that try to make the
10 best of it.

11 When I grew up, you did have the term of "village raising
12 children." My neighbors could beat my butt just as much as my
13 father could beat my butt or mother could beat my butt, before
14 they got home. So definitely, we still -- despite what we were
15 brought up around, you still have respect, you still had
16 dignity, and you still understood respect for the law and
17 respect for adults, elders and also for women, if you were a
18 man.

19 Q. Mr. McCray, can you then just walk through briefly through
20 your education. Let's just start with where you graduated from
21 high school, sir.

22 A. Okay. I never failed once in my 12 years. I'm a graduate
23 of Carver Vocational Technical High School. My trade was
24 commercial art. I loved to draw. I furthered my career a few
25 years after that into something I still do it to this day, into

1 barbering, barbering school. I went to Gordon Phillips Beauty
2 School, now defunct and out of business. That kind of shows my
3 age.

4 From that, I tried another path a few years later with
5 All-State Career School, going for CDLs, commercial driver's
6 license. And from that point on, anything else was all just
7 basically done off the books. Things that I wanted to do on my
8 own, as far as reading books and taking courses and things of
9 that such, but nothing formal.

10 Q. And just very briefly, these will be the last few
11 questions I have about your background, Mr. McCray. If you
12 could tell Judge Anderson what year did you graduate out of
13 Carver Technical High School.

14 A. 1996. Class of '96.

15 Q. And what year did you graduate from barber school?

16 A. 1999.

17 Q. Finally, Mr. McCray, what year did you finish All-State to
18 get your commercial driver's license?

19 A. 2009.

20 Q. How old are you today, Mr. McCray?

21 A. Forty-four.

22 Q. Mr. McCray, now I want to direct your attention to your
23 time working at Pharmacare, as you testified, from
24 November 2009 until it was shut down by the raid in July of
25 2013.

1 A. Okay.

2 Q. When you worked at Pharmacare, was that the first time you
3 met Mr. Reddy Vijay Annappareddy?

4 A. Yes.

5 Q. Explain to the court what Mr. Reddy Vijay Annappareddy was
6 like as a pharmacist and boss of Pharmacare?

7 A. I didn't know what to expect, because it wasn't as if I
8 filled out an application or, you know, anything formal online
9 or applied or things of the such. I actually came across him
10 through my now-deceased father-in-law. He actually was one of
11 the staff at Park West, Park West Men's Center, located on Park
12 Heights Avenue. And he knew -- because, again, I had not so
13 long ago graduated from All-State and still was feeling my way
14 around because I didn't have a job at the time. And he
15 suggested, well, you like driving so much -- he mentioned to me
16 that they get medication from a pharmacy, and he suggested, you
17 know, maybe I can apply for a job there because they think they
18 may have a need for more drivers.

19 So when I first met him, seemed like a great guy. I mean,
20 as far as I could tell. I mean, he didn't really hide
21 anything, cut any corners. Told me exactly what they do there.
22 Because prior to that, the only experience that I had with any
23 kind of medications was going to the pharmacy and getting my
24 medications filled. So he basically explained to me how it
25 works. Because, again, in 2009, to deliver medication was not

1 an everyday thing, as it is now. So I thought it was
2 interesting, and it definitely didn't seem like something I
3 couldn't do. And I said okay. You know, this guy's going to
4 give me a shot, you know, hey, let me -- I'm not going to let
5 him down.

6 **Q.** Mr. McCray, let me just walk back through your answer and
7 pull out a few things.

8 Mr. McCray, how would you describe Mr. Annappareddy's
9 leadership style at Pharmacare?

10 **A.** Revolutionary. That's one word that I always like to use,
11 is revolutionary. Because, again, like I said, in 2009,
12 delivering medication was not a regular thing. You didn't even
13 have doctors even doing what they call now home visits or
14 paramedication [sic] back then. That didn't exist.

15 So when he explained to me the concept, I said this is
16 interesting, you know. Because I did think of, just even back
17 to my childhood, whether it'd been my grandmother or whether
18 it'd been elderly folks in my neighborhood, I knew sometimes
19 what hassles can be, even if it's just getting a ride to the
20 pharmacy, because not every neighborhood has a pharmacy.

21 So when he explained the concept of actually whether it be
22 from a doctor or a clinic, wherever it was that these folks may
23 have gotten a prescription for medication, just to simply be
24 able to get that to their doorstep rather than having them go
25 anywhere, I thought that was kind of unique. And it was kind

1 of something different in 2009. So, I said, yeah, I could
2 definitely do that. And, again, I love the road, and I know
3 the city back and forth, so that wouldn't be a problem. So I
4 said, yeah, this is something I can do.

5 Q. What was the patient population that was being served by
6 this revolutionary concept that you're describing?

7 A. In the beginning, we didn't have the numbers, as it grew
8 to become. In the beginning, I would say, for the first
9 several months, that I'm aware of, that I was personally
10 delivering to, it was probably a base of anywhere between 40 to
11 maybe 60 folks, people, at the time, in the beginning.

12 Q. And if you could describe or characterize what type of
13 people were receiving this medication in general?

14 A. Your everyday folks. They were nothing special. Nothing
15 different about folks. But one thing I would say is that you
16 did have an elderly population. You did have a population that
17 I call impoverished, because these people probably didn't have
18 means of transportation as having their own vehicles or things
19 of that such. And these were people that were appreciative.
20 Because to a lot of them, this was new to them as well. And it
21 was, you know, something that was very convenient and, in some
22 cases, lifesaving. So this population was appreciative. They
23 varied. It was not just one group of people; black, white,
24 Hispanic, Jewish. I mean, they were all demographics across
25 the board.

1 Q. Is it fair to say that some of these people had been in
2 and out of incarceration?

3 A. Oh, yes. We had a population of those as well that -- I
4 guess, in today's climate, people probably would be afraid to
5 deliver to them because of where they lived at. I mean, I
6 would go to -- whether it be projects, all the way to
7 upper-class income families, if you want to call it such.

8 Q. Were some of these patients struggling with HIV?

9 A. Yes. In the very beginnings, I didn't know, you know,
10 what medications were treated for what such. So I would later
11 learn, as the company grew, of course, what medications are
12 deemed for HIV patients, as, again, we would later classify
13 them as Med-4 patient. And these were patients that maybe, in
14 some instances, were probably embarrassed maybe to, I guess, go
15 to a pharmacy and maybe have their medications probably called
16 out or maybe afraid or what have you. Because, again, this is
17 2009, it's not -- I mean, even though we may think it's an
18 everyday thing now. Again, myself -- I don't mean to date
19 myself -- I go back to Magic Johnson. You heard HIV, that's a
20 death sentence. You know, "Eww, get away from me." You know,
21 people were still afraid to even be touched. So this was a
22 population that was very appreciative to have these kind of
23 services.

24 Q. Mr. McCray, you used this term "Med-4."

25 A. Yes.

1 Q. What's your understanding of how that term was used by
2 Pharmacare as you delivered patients -- or delivered
3 medications?

4 A. To be honest with you, I guess educationally or
5 technically, I still, to this day, don't know what Med-4 or
6 even what the term "stat" means, other than I know "stat" means
7 important. I ask doctors, and they still can't even tell me.

8 But Med-4, I just deemed it as HIV or AIDS patients.
9 That's, you know, still, to this day, the only thing I know
10 what Med-4 means.

11 Q. Mr. McCray, can you explain to Judge Anderson what
12 happened on the day to day when you picked up drugs from
13 Pharmacare and you delivered them, just explain the process,
14 briefly, if you can, as a delivery driver.

15 A. Okay. In the very beginnings, when I say "beginnings," I
16 mean November of 2009, December, January, maybe until the
17 beginnings of the spring, it wasn't as coordinated. Because,
18 again, just starting out.

19 So -- and I can't even remember his name off the top of my
20 head right now, that's how long it's been, because it was only
21 myself and the other driver. It was only one driver prior to
22 myself coming. I was the second driver. And we were using our
23 own cars.

24 GPS is -- still was a little, I guess, dated. TomTom,
25 Garmins, things of that such. So outside of using those, if

1 you didn't know, in a sense, the neighborhood, I mean, we kind
2 of felt it out.

3 But in the beginning, we would come in, we would have our
4 medications in our bins, you know, laid out for us. I may
5 have, in the beginning, maybe 12, 15 or so, maybe deliveries.
6 And there you go.

7 We would continue to -- you know, we would go and come in
8 the morning, and we would go through the whole layout, we have
9 this medication for Mr. Such-and-such, we have this medication
10 for Mr. Such-and-such. And we would go through all of the
11 medications, have them loaded in our bins. Maybe try to give
12 our own selves maybe kind of a map out where we might go first,
13 second, third, or fourth, to try to make it a little more
14 economical as far as on us. And do the best of our abilities
15 to make sure that those patients got their medication.

16 Q. All right. Let me walk back through your answer.

17 You mentioned that you would go to your bins; do you
18 recall that testimony, sir?

19 A. Correct.

20 Q. I want to show you what's been marked and admitted into
21 evidence as Plaintiff's Exhibit 149.

22 Do you see Plaintiff's Exhibit 149, sir?

23 A. Yes. It brings back memories.

24 Q. Why does Plaintiff's Exhibit 149 bring back memories?

25 A. Because that was almost -- I guess depending on what kind

1 of company you worked for, that was your work for the day.
2 That was, in a sense, your workload, as they say, for the day.
3 So maybe you may come in on one day, and that thing might be
4 full to the brim. You know you got some running around to do,
5 some hustle and bustle, as they say. Or some days it might
6 just be medium, medium as you call it. That's not that bad,
7 you know, I think I can get through this day without too much
8 gas being burned or whatever have you and such. Because,
9 again, in the beginning, we were using our own vehicles.

10 **Q.** Mr. McCray, just so we're clear, when you say this bin,
11 which is at, again, Plaintiff's Exhibit 149, was your workday,
12 what was in that bin that told you, "That's going to be my
13 workday for the day"?

14 **A.** Just the medication itself. Whether it be -- and again,
15 sometimes you may -- because we didn't have everything, as I
16 say, logistically mapped out. I would later find -- early, in
17 the first couple days, maybe first couple weeks, at best, I may
18 have 20-something bags in there, but sometimes four or five of
19 those bags are to the same patient. So I'm like, oh, okay,
20 it's not as bad as I think. So I'm thinking I have 17 stops,
21 when, in actuality, I may only actually have 12 or 13. It's
22 just looked more because they're not all packaged in one bag.

23 **Q.** Mr. McCray, can you please explain to Judge Anderson this
24 idea of sometimes the bin would not have a lot of medications
25 and sometimes, I think you said, it would be overflowing.

1 A. Yeah.

2 Q. Just walk Judge Anderson a little bit through why some
3 days there were a lot of medications in those bins, and on
4 other days there were not a lot of medications in those bins.

5 A. Correct. It made sense -- like I said, I learned early,
6 in the first couple days, at best, maybe first couple weeks,
7 and I would say when I say "weeks," I mean two weeks.

8 I would learn that -- say if it was a day they came in and
9 it weren't that many, it probably meant because some of those
10 deliveries were in further counties. So that actually, when
11 you look at it, makes sense, you know. I may have 11, 12
12 deliveries, but three or four of those may be -- one might be
13 in Montgomery County, another one might be in Howard County,
14 another one may be somewhere all the way in, you know, in the
15 city, things of that such. Opposed to maybe a day if I come in
16 and they're completely, say, full, I may have 20-some-odd
17 deliveries, those are mainly all in the city. So it made sense
18 logistically.

19 Q. One, I think, follow-up question about these bins.

20 Can you describe to Judge Anderson how the bins were
21 organized with respect to the locations that the medications
22 had to be delivered to.

23 A. In the beginning, as I just stated, it kind of -- I didn't
24 think was rhyme and reason, as I said, but I would later see
25 that, oh, it is a reason for it. As I said, because if I only

1 had 11, say, deliveries, I know that three or four of those
2 deliveries are probably going to be way yonder somewhere.

3 I always tell folks, and especially when I was working
4 there, when I watched the news, particularly the weather, and
5 they show you these places, La Plata, California, Sparks. I
6 never been to these places before, and this is in my own state.
7 I know that Baltimore City is the heart and soul of Maryland,
8 but the state is comprised of many, many counties.

9 And I would learn -- because I would actually -- I been to
10 these places now. So I would see, again, but I don't know
11 honestly where they were until I type it into the GPS. And I
12 would see -- depending on where I am, oh, boy, this next
13 delivery is going to take 50-some minutes to get so. So it
14 made sense that I only had 11 as opposed to -- I cannot
15 remember his name that initially -- when it was just us two.
16 He may have 20, but his is all around and located in the city.
17 So even though I have 11 and he may have 20, we're probably
18 still doing the same amount of time almost when you look at
19 logistically, opposed to, you know, he having more and I having
20 less. So it panned out.

21 Q. When, if ever, do you recall that the bins actually were
22 labeled for certain locations, for example, Secours hospital?

23 A. Rephrase that. What do you mean?

24 Q. Yeah, let me ask a better question.

25 In your experience there at Pharmacare from 2009 to 2013,

1 was there a time when you would look at the bin and the bin
2 would be earmarked, say, for --

3 A. Correct.

4 Q. -- a certain hospital or a certain clinic?

5 A. Now I gotcha. Yes --

6 Q. Please explain that to Judge Anderson.

7 A. -- as things went along --

8 Q. Wait a minute, Mr. McCray. I'm going to cut you off,
9 because it's going to be the last time, hopefully, that I cut
10 you off, just to remind you and me that when I ask a question,
11 do your best just to listen and not talk, and when you're
12 giving an answer, I'm going to try my best to return the favor.
13 And that's so our court reporter --

14 A. The stenographer.

15 Q. -- can write down everything. Again, just so we're clear
16 about the question. Can you explain to Judge Anderson, when,
17 in your experience at Pharmacare, 2009 to 2013, you looked at
18 those bins and saw those bins were dedicated to certain areas
19 in the city or outside the city. Explain that to
20 Judge Anderson.

21 A. As things progressed and logistics became better, yes, we
22 had bins where we may have one whole complete whole entire bin
23 that may be for Mosaic, or one whole bin that may be, say,
24 Med-4 patients, or one whole bin that may be Park West.

25 We did service several clinics the further along that

1 Pharmacare got.

2 Dr. Reddy was very adamant about his vision and, of
3 course, wanted to spread this wide -- spread further than what
4 our demographic began. And, of course, word-of-mouth traveled.
5 Doctors would tell other doctors, things of that such. And, of
6 course, they would ask, "Can we come along," as far as, "Could
7 Pharmacare deliver services for our clinic?" So those bins
8 would be dedicated strictly just for that clinic. And that
9 would, of course, let us, the drivers, i.e., know exactly,
10 okay, I know I have to go to Mosaic with this whole bin, or I
11 know I have to go to Park West with this whole bin, or I have
12 to go to Man Power, BBH, et cetera, down the line. It made it
13 so much easier, and it made sense.

14 Q. Now I want to focus your attention, Mr. McCray, on when
15 you would take one of these bins, deliver the medication to the
16 patient. I want to focus your attention on the delivery logs.

17 A. Okay.

18 Q. Please, Mr. McCray, explain to Judge Anderson what
19 happened with these delivery logs.

20 A. Okay. With the delivery logs, no different than to this
21 day, and it's always been. If you go to a pharmacy to pick up
22 your medication, you have to sign for it, correct? So that's
23 the same philosophy as I came to Pharmacare, from day one, how
24 it was explained. When you deliver a medication, we cannot
25 complete a delivery until the patient signs for the medication.

1 So when I take a delivery to whoever it is, Mr. and Mrs.
2 Such-and-such. I hand them the medication, they sign for it,
3 showing that they receive the medication. That's what that
4 signature insinuates. No different than if I come to your
5 store to buy a good. If I want to buy that soda, I have to
6 give you something; meaning cash, currency. In our field, that
7 signature is our currency.

8 Q. In your field, that signature is your currency.

9 Is it fair to say, then, that in your field signing the
10 delivery log was very important?

11 A. Very. Without a sign, there is no delivery.

12 Q. Because it was so important, explain to Judge Anderson
13 when, if ever, there were forged signatures on the delivery log
14 as far as what you saw.

15 A. Never.

16 Q. Why?

17 A. That's fraud. I can't come into your store and take your
18 soda and walk out. Forget about the law, forget about law
19 enforcement. If I take a soda from your store, you, at the end
20 of the day, where is your profit from that? You need to know
21 where that dollar, or nowadays \$2 just for a soda, \$2 is for
22 that soda that's missing off my shelf.

23 Q. In your experience at Pharmacare, from 2009 to 2013, when,
24 if ever, did Mr. Annappareddy tell you to forge a signature on
25 a delivery log?

1 A. Never. Never.

2 Q. Mr. McCray, I want to ask you now to focus your attention,
3 if you will, on this idea of reversals.

4 A. Okay.

5 Q. Please explain to Judge Anderson what a reversal is.

6 A. Prior to Pharmacare, the only thing I know about reversal
7 is, I guess everyday things that everybody would think of
8 reverse -- like UNO, reverse we got to turn -- other than --
9 prior to that, I didn't know anything about that.

10 But a reversal basically means that a medication or
11 product was not able to be delivered to a patient, so that
12 means that we have to put that back on the shelf. We have to,
13 I guess, essentially, because I understand that things are
14 prebilled, same as it is in a hospital. Everything is
15 prebilled. So if a person comes in and fills a prescription,
16 okay, and it gets to the pharmacy, they already have billed
17 that patient before the patient actually even has anything in
18 their hand.

19 So if we cannot deliver that product or that good, that
20 has to be brought back and, i.e., the pharmacy has to reverse
21 that so that their insurance is not billed.

22 Q. Did Mr. Annappareddy explain to you about how reversals
23 work?

24 A. Not -- not the whole process. That's all I need to know.
25 That's above my pay grade.

1 Q. How did you, Mr. McCray, learn about the process of
2 reversals?

3 A. He kind of gave us a synopsis in meetings about exactly
4 what I just mentioned. If we are not able to make sure that
5 that patient received their good, as I call it, whether it be a
6 medical device or medication, we have to bring it back and of
7 course the pharmacist, i.e., they do their job.

8 Q. When you say the pharmacy -- the "pharmacist, i.e., they
9 do their job," explain to Judge Anderson what you mean by that.

10 A. Sometimes -- it would be times where we weren't able to
11 deliver a medication, maybe, or a product or a good to a
12 patient. And maybe a week or two later, I may have that
13 medication back in my bin, same bag, same person, but now we
14 have a different address because somebody has probably gotten
15 in contact with a doctor, if not the patient directly
16 themselves, and let them know that, "Oh, I don't live there
17 anymore, I live X, Y, and Z, and I never updated my address,
18 that's on me, X, Y, and Z." Or sometimes, because we weren't
19 able to deliver the medication -- again, especially, with Med-4
20 patients, these folks -- because it's 2009, '10, '11, it's not
21 like how it is right now if somebody sitting beside you with
22 HIV, you wouldn't think about it twice. Back then, there was
23 still a little stigma. So some people purposely gave wrong
24 addresses or they just never updated their information. But
25 they did have -- but their doctor or their direct liaison at

1 one of these clinics, they know where these people are.

2 So someone, I'm assuming, finally got in contact with the
3 patient, so maybe next week, two weeks later, that medication
4 is in my bin again, but now I have an updated phone number or I
5 may have a updated address. And now I was able to successfully
6 deliver that medication or product or good to that person, get
7 a signature, did my job, and brought it back. So that was
8 great.

9 Q. Let me ask you, Mr. McCray, when you were working there at
10 Pharmacare from 2009 to 2013 with Mr. Annappareddy, how
11 dedicated were you and Pharmacare to getting medications out to
12 the patients?

13 A. I loved it because I know how it was with my own
14 grandmother. And I watched how my mother used to rip and run
15 and fuss at doctors on the phone and, you know, try to do
16 whatever it was that she could to get her arthritis medication.
17 Or maybe sometimes wasn't able to afford these medications, and
18 things of that such.

19 So I knew early, from the very beginning, the importance
20 of it. That's why when I was introduced to Dr. Reddy and he
21 explained to me delivering medication, I'm like, wow, who does
22 that. Because again, this is 2009, nobody was doing this. So
23 I really liked it and I know, myself, that the importance of
24 people having their medications. So I'm -- I didn't take that
25 for granted.

1 And especially early on, when I didn't know what medicines
2 do what and what treats what and things of that such, I treated
3 everything, as I still continue to do, throughout the rest of
4 the process, as I was learning what this medication was used
5 for, what that is used for. I knew the importance of it.

6 Because in my community especially, when you asked earlier
7 about where I grew up or where I come from, something like
8 getting your medication, it's not as easy as some people think
9 that it is. Some people can't afford their medications. I
10 know people still to this day that are suffering, and they just
11 deal with it, self-medicate, whatever it is that they have to
12 do just to get through, because they can't get their
13 medication. They don't have insurance. They can't get that
14 stuff. So I always knew that was important.

15 Q. Mr. McCray, as a delivery driver for Pharmacare, how many
16 times, in your experience, would you try to get a medication to
17 a person? How many attempts would you take --

18 A. Oh, shucks. Sorry.

19 Q. -- to try to get medication to a person?

20 A. In the course of a day -- and again, this is contingent
21 upon the time of day and how many medications that I have, but
22 I'm going to at least try, at least twice. On day one, I'm
23 going to at least try twice. If I'm on the east side of
24 Baltimore and I had Mrs. Whoever, and I went to her house the
25 first time and she wasn't there, okay. I'm going to continue

1 to do the rest of my deliveries over on the East Baltimore
2 side. Before I go to South Baltimore, if I go to
3 West Baltimore, I'm going to try again to see -- who knows,
4 maybe Mr. Such-and-such was in the bathroom at the time. Maybe
5 they weren't home from work at the time. So I'm going to try
6 again. So at least each time in the day, I want to at least
7 try twice, maybe three or four, if I have the extra time.

8 Q. When you would try three or four times if you had the
9 extra time, how did Mr. Annappareddy look at that as your work,
10 how did he rate that as your work?

11 A. He loved it because he seen that I was dedicated. He seen
12 that, as far as my take from it. He seen that I was passionate
13 about it like he was, so he appreciated that.

14 Q. One last question about reversals, Mr. McCray.

15 When, if ever, did Mr. Annappareddy tell you, "Don't do
16 any reversals"?

17 A. Never. I don't even know how to do a reversal. That's
18 above my pay grade.

19 Q. When, if ever, did Mr. Annappareddy tell you to engage in
20 fraud?

21 A. Never. Never.

22 Q. Now, Mr. McCray, I want to direct your attention to the
23 Boost Program at Pharmacare. Explain to Judge Anderson about
24 the Boost Program at Pharmacare.

25 A. Again, I'm going to use the R word, revolutionary. I

1 still, to this day, don't think anybody does that. As
2 Pharmacare grew and we were able to, as was stated earlier,
3 specify the patients that were Med-4, I didn't understand or
4 didn't -- I didn't even know, like, what Boost is used for. I
5 thought it was just for, you know, if you were hungry, you
6 drunk that if you didn't have food. He explained to me,
7 medically, what HIV does to your immune system.

8 So he explained that what Boost, Ensure, what they aid and
9 what they help and what they do, as well as replenishing,
10 helping fight off things in the body, things of that such. So
11 along with whatever medications they were taking, Boost is like
12 another extra help to fight the immune disease, which is HIV.
13 And I thought that was -- like, wow, that's what it actually
14 does. So I thought that was great.

15 **Q.** Can you explain to Judge Anderson whether that Boost
16 Program was something that was required by Pharmacare to do or
17 not?

18 **A.** No, nope. Nope. That was a thing, like I said, that made
19 it a step further. That's why, again, I use the R word,
20 revolutionary. Because I don't think anybody still, to this
21 day, does that.

22 **THE COURT:** Tell me what the Boost Program is. I
23 don't understand it.

24 **MR. FLOWERS:** And let me do a better job, Your Honor,
25 of bringing that out of Mr. McCray.

1 BY MR. FLOWERS:

2 Q. Mr. McCray, if you could, can you just explain,
3 succinctly, but in your own words, what exactly is Boost as a
4 product?

5 A. Okay. If you go to your local market right now or
6 Walmart, CVS, wherever you want to go, the actual 8-ounce jars
7 of Boost or Ensure, there's a thousand different brands of them
8 now. But Ensures [sic], Boost, things of that such, they come
9 in cases, cases of 24s. And, again, now they probably have a
10 thousand different flavors. But back then it was just
11 strawberry, chocolate, or vanilla.

12 And if you were a Med-4 patient, meaning you had HIV,
13 AIDS, he introduced this program that he was able to, along
14 with your medication -- and again, the patient had to ask for
15 it. He didn't force it on anybody. But he offered Boost to
16 the patients as well with their medications. And what we did
17 was, we carried a separate delivery log for the Boost to
18 account for that.

19 So we would have two different signature sheets; one
20 signature sheet is for the medications, and another signature
21 sheet is for the Boost. And as the program grew -- because I
22 knew all of my customers -- I'm not even going to go call it
23 customers. I knew all of the folks that I delivered to. I
24 knew everybody. I knew if Ms. Such-and-such -- because they
25 liked certain flavors. People are particular, you know.

1 You're a Pepsi guy; I might be a Coke guy. They knew what they
2 wanted.

3 So Mrs. Johnson may want strawberry. Mr. Paul only likes
4 chocolate. Mr. Paul told me, "If you don't have chocolate,
5 don't send me anything." Because we did try to experiment in
6 the beginning. Because if they said yes, they wanted it, in
7 the beginning, we didn't know, like, what flavor

8 Mr. and Mrs. Johnson may want. So if Mrs. Johnson only gets
9 strawberry, but we were all out of strawberry, we might send
10 her a chocolate. But Ms. Johnson say, "Eww, I don't like
11 chocolate," or something, whatever have you. Some people have
12 special preferences. They will tell you, you know, "Well, if
13 they don't have strawberry, you can send me whatever." Or some
14 people may say, "If you don't have chocolate, don't send me
15 nothing, that stuff is nasty." You know, we would keep that in
16 mind, and we just wouldn't bring it to them until we got that
17 flavor back in stock.

18 **THE COURT:** Mr. McCray, slow down. I talk fast, just
19 like you. Slow down just a little bit for the court reporter.

20 **THE WITNESS:** Sorry, I been told this ever since
21 elementary school. I'm sorry.

22 **BY MR. FLOWERS:**

23 **Q.** All right. Mr. McCray, we're going to try to slow you
24 down just a little bit.

25 With respect to Boost, is it fair to say it's a

1 nutritional supplement?

2 A. Yes, yes, yes. I drink them.

3 Q. And you explained to Judge Anderson why you had a
4 signature log, even with the Boost, that went with the delivery
5 log for the medication?

6 A. Because it has to be accounted for. Simple as that. It
7 has to be accounted for just like any of the other goods. If I
8 brought a cane to someone, there would be a signature for that.
9 If I brought someone -- what do you call -- a bed pan. If I
10 brought someone a bed pan, there's a signature sheet for that.
11 Any product that we brought, there was a signature for it to
12 account for it.

13 Q. You testified about this Boost Program not being something
14 that Pharmacare had to deliver to the patients. It wasn't a
15 mandatory requirement. Do you recall that testimony?

16 A. Yes, yes.

17 Q. Were there other things that Pharmacare did for its
18 patient population that was not mandatory?

19 A. Yes. I call it "meet them where they are." Again, it
20 wasn't necessary, but as far as products, other than Boost,
21 nothing that I could think of. But services, yes, yes.

22 Q. And what were some of those services that Pharmacare
23 provided to its patient population that it didn't have to
24 provide?

25 A. Privacy is the first thing that comes to my mind.

1 Q. Explain privacy to Mr. Anderson -- or, forgive me,
2 Judge Anderson.

3 A. I really, really think to the Med-4 patients, when it
4 comes to privacy, I had patients that they very, very much
5 wanted to keep their privacy intact.

6 I can think of one person in particular. She was from
7 East Baltimore. It was herself, along with her sister and her
8 mother, a house full of women. But oddly enough, they did not
9 know that she had HIV. So what she would have me do was --
10 because we had their phone numbers, and we would generally give
11 folks calls before we come to deliver. If I gave a call and
12 she didn't answer the phone, and her mother answered the
13 phone -- because even though she was an adult, her mother was
14 really very overprotective of her. So if I called and her
15 mother answered the phone, I had to pretend as if I was a
16 boyfriend or someone that she met at the club or something of
17 that nature to maintain her privacy. And instead of delivering
18 it to her house, I would meet her somewhere, down the street or
19 something, to keep her privacy.

20 Q. Mr. McCray, was that something that Mr. Annappareddy
21 supported; that is, supporting you to maintain the privacy of
22 your patient population?

23 A. Yes, yes, yes.

24 Q. What, Mr. McCray, if any, health fairs do you recall
25 Pharmacare putting on between 2009 and 2013?

1 **MR. PHELPS:** Objection, Your Honor. I'd like to be
2 heard, if the witness could be excused.

3 **THE COURT:** All right.
4 Please step out, if you would, just a moment.
5 (Witness exits.)

6 **THE COURT:** All right. What's the objection?

7 **MR. PHELPS:** I have relevance and 403 objections, Your
8 Honor. There's no evidence that this witness was interviewed
9 by the government prior to the execution of the search warrant
10 in the indictment, and I think that's -- I think -- I don't
11 think that's in dispute.

12 **THE COURT:** Right.

13 **MR. PHELPS:** Additionally, Your Honor, while I'm happy
14 to allow them to burn through their time, I am concerned
15 that -- kind of the needless presentation of this evidence is
16 going to later be used as a basis to say, "Your Honor, I need
17 more hours. I just simply don't have enough hours."
18 Meanwhile, those hours are being used with things like Boost
19 nutritional drinks and health fairs, none of which had anything
20 to do with information that was known to the government at the
21 time of the indictment. Some testimony is fine, I think this
22 is getting a little long.

23 **THE COURT:** How much longer do you anticipate you're
24 going to go with him?

25 **MR. FLOWERS:** Your Honor, probably another 20 minutes.

1 And just let me, if I can, address it -- it seems the
2 Government's two-fold objection.

3 The first part, that this person was never interviewed in
4 2013, kind of in that relevant time period before the Maura
5 Lating affidavit, that's exactly why he's on the stand, to show
6 the Court that this is a person that they should have
7 interviewed, and they didn't because of all the information he
8 has, including how these medications were delivered.

9 The Court has already heard testimony that, for example,
10 the delivery logs, by the Government, were never obtained, at
11 least from Lisa Ridolfi. As the Court is very, very well
12 aware, Lisa Ridolfi is a very, very key witness, as the
13 putative whistleblower in this case, not the actual
14 whistleblower. I will elicit, from this witness, information
15 about Lisa Ridolfi. I will elicit, from this witness,
16 information about Robert Mosley and Maura Lating, the two
17 agents in this case who should have interviewed this witness.

18 So that's where the information is going. That's why,
19 certainly, it is relevant.

20 With respect to his second point --

21 **THE COURT:** Wait, before you move on, let me ask this,
22 and maybe he said it, was he the only delivery driver during
23 the relevant time period?

24 **MR. FLOWERS:** No, he was not. And I can bring that
25 out again, just so the Court is well aware, he was not the only

1 delivery driver.

2 **THE COURT:** Go ahead with your second point.

3 **MR. FLOWERS:** All right. This second point, this idea
4 that the Government now is all of a sudden concerned about how
5 we managed our 30 hours, and the Government, from our
6 perspective, has certainly wasted much of our 30-hour time, I
7 think that's rich. But I will say this, we certainly know how
8 to manage our time. We are working up against the 30 hours
9 every single day.

10 **THE COURT:** Let me jump in here. We did the math last
11 night. If we have a gap day tomorrow and half a day Monday,
12 you're not going to be able to get to your 30 hours.

13 **MR. GREENBERG:** I understand, Your Honor, and we're
14 going --

15 **THE COURT:** And so the issue about time limitations is
16 going to evaporate when that happens.

17 **MR. GREENBERG:** I understand, Your Honor.

18 **THE COURT:** I don't want to hear any more complaining
19 about new stuff making you burn your time, because you're not
20 going to need it.

21 **MR. FLOWERS:** And, again, Your Honor, for this
22 particular witness, it's very important that we lay this
23 foundation and be expeditious and as efficient as possible.
24 The other kind of arguments that I've made throughout our
25 six-day trial about the 30 hours, you know, still stand. But,

1 certainly, for this witness, it is very important that we bring
2 out, again, very relevant information about Maura Lating, who
3 wrote the most important document in this case. Very relevant
4 information about Robert Mosley, again, who was a part of the
5 writing of that most important document in this case. And Lisa
6 Ridolfi. And even Dennis Tokofsky. So those are four very
7 important things that this Court needs to know.

8 And certainly, I've got to lay a factual predicate such
9 that when Mr. McCray starts to talk about these four witnesses,
10 the Court will have a factual -- more to understand why, when
11 he says what he says about Lisa Ridolfi or about
12 Dennis Tokofsky, why that matters, why it should have mattered
13 back in 2013, and the government did not care to interview him
14 or, quite frankly, any other drivers.

15 **THE COURT:** All right.

16 What's the response?

17 **MR. PHELPS:** Your Honor --

18 **THE COURT:** I think the time issue is a moot point
19 now, I believe.

20 **MR. PHELPS:** Your Honor, let me talk about relevance
21 for a second. All right.

22 We've decide -- you know, pretrial, post-indictment
23 evidence is not relevant to probable cause and malice of the
24 agents at the time. Now -- and every time we try to introduce
25 a post-indictment document, Your Honor, all we hear about are

1 the mini trials that are going to be created by merely
2 introducing exhibits on our exhibit list. But now, when it's
3 their opportunity to ask questions, they have all sorts of
4 post-indictment information to talk about Agent Lating and
5 Agent Mosley. They can't have it both ways, Your Honor.

6 **MR. FLOWERS:** If I may Your Honor. Again, we have not
7 put on any post-indictment evidence with the exception of --
8 and there will be more of this evidence, so I want to go ahead
9 and forwarn the Government, I did it at the opening statement,
10 I'll do it again now. There's going to be post-indictment
11 evidence about the damages that their actions did to this man,
12 Mr. Reddy Annappareddy.

13 There will be -- and I want to warn the Government and the
14 Court now. This witness is going to talk about a witness
15 interview that happened in 2014 with respect to Maura Lating
16 and Robert Mosley. The reason that those two interviews are
17 incredibly important, because it is 404(b) evidence; that is,
18 it shows the intent of Agent Mosley and of Agent Lating back in
19 2013. It shows -- the evidence that's going to come from this
20 witness is going to show that they operated in a common scheme
21 or plan; that is, not to get very, very relevant information in
22 this case purposely and maliciously, as I must show to this
23 Court in order to prove that there's malicious prosecution in
24 this case under the Federal Tort Claim --

25 **THE COURT:** All right. I understand. Let me just

1 say, I'm sure the Government is going argue -- and we're really
2 getting into closing argument here. The Government is going to
3 argue that there's no obligation to interview every single
4 employee of a business being investigated. I know that.

5 I mean, since we're not going to be bumping up against a
6 time problem, I'm inclined to allow this to go forward. We
7 don't need to hear a lot of to be about the fair program,
8 nutritional fair. I mean, it's a good idea to do it, but I'm
9 not sure how terribly relevant it is, and I don't know if the
10 Government probably will want to cross-examine much about it.

11 **MR. PHELPS:** I don't have any health fair questions,
12 Your Honor.

13 **THE COURT:** All right. Let me just say, I've been a
14 judge almost 37 years now. I've only two times in the past
15 imposed time limitations on a trial. And in both of those two
16 previous cases, the party did not need the time that was
17 allotted. Looks like this is going to be the third. I mean,
18 we heard a lot of complaints about bumping up against the
19 30 hours, but then we find out yesterday that we're going to
20 come back next week and do five witnesses in four and a half
21 days and finish on Friday. If that happens, I don't think the
22 Plaintiff will have used their 30 hours.

23 So with that, let's bring the witness back and move on.

24 **MR. FLOWERS:** Very well. Thank you, Your Honor.

25 (Witness enters.)

1 **MR. FLOWERS:** May I proceed?

2 **THE COURT:** Go ahead.

3 **BY MR. FLOWERS:**

4 **Q.** Mr. McCray, before we took that break, we were asking you
5 about the Boost Program and the other things that Pharmacare
6 did that they did not have to do.

7 I want to turn your attention away from that and ask you a
8 question about the number of delivery drivers that worked with
9 you from 2009 to 2013. If you could, explain to
10 Judge Anderson, again, how many delivery drivers worked with
11 you from 2009 to 2013.

12 **A.** I mean, just so -- I won't sit here and actually try to
13 remember name by name, I would say no more than 10.

14 **Q.** No more than 10?

15 **A.** That I can think of. I mean, again, this has been almost
16 10 years ago for me.

17 **Q.** And that 10 delivery drivers, does that include you in
18 that number?

19 **A.** Correct.

20 **Q.** All right. So it's fair to say your testimony is from
21 2009 to 2013, there were about 10 delivery drivers?

22 **A.** That I can think of, yeah, off the top of my head, yes.

23 **Q.** Is it fair to say that the delivery drivers from 2009 to
24 2013, those 10 delivery drivers, also had an obligation to use
25 the delivery logs that you testified about?

1 A. Correct. Correct.

2 Q. And from your experience, they had the patients sign those
3 delivery logs?

4 A. Correct.

5 Q. And do you recall about how many delivery drivers were at
6 the Plumtree location?

7 A. Before I departed -- okay. Be more specific. When you
8 say "at that," do you mean the whole period, or do you mean
9 towards the end? You got to be specific.

10 Q. Very, very good question there, Mr. McCray. Let's talk
11 about at the end.

12 A. At the end --

13 Q. Let me just ask the question and give you a good question,
14 if I can.

15 At the end, or in that 2013 period, how many delivery
16 drivers were at Plumtree?

17 A. I would say four to five.

18 Q. Okay. And in the end, in that 2013 period, fair to say
19 you were one of those delivery drivers at Plumtree?

20 A. No.

21 Q. Who were the delivery -- let me ask you this: Where were
22 you based?

23 A. Park Heights.

24 Q. All right. And what was your interaction with the
25 delivery drivers over at Plumtree?

1 A. We talk on the phone. Because sometimes, being as though
2 that I originated from Plumtree, if it was a time where maybe
3 one of the drivers may have had issue with delivering a
4 medication or product, they may call in and quiz it with me,
5 you know, did I have a better way of getting in contact or what
6 have you of Mr. and Mrs. Such-and-such, you know, to get to
7 them.

8 Q. When did you leave the Plumtree location as a delivery
9 driver; in other words, when was Plumtree no longer your, kind
10 of, headquarters location?

11 A. I would say the end of 2012.

12 Q. At the end of 2012, even though Plumtree was not your
13 headquarters, did you have occasion to go to Plumtree and help
14 the delivery drivers there?

15 A. Yes. Because also -- let me reiterate. Even though
16 Plumtree didn't maintain as my home base that I had to go to
17 daily, we were all required to at least work one Saturday a
18 month. And those deliveries still originate from Plumtree. So
19 it didn't matter that I didn't, you know, home base out of
20 Plumtree. But my one Saturday that I worked that month, I'm
21 still going to Plumtree for my delivery stuff.

22 Q. Very well, Mr. McCray.

23 I'm now going to ask you some questions about how
24 Mr. Annappareddy treated his employees at Pharmacare.

25 A. Okay.

1 Q. All right. How would you describe how Mr. Annappareddy
2 treated the Indian employees at Pharmacare?

3 A. I would say he treated them differently. He treated them
4 differently because that's their culture. I mean, you know, no
5 differently than myself and Sean are not going to treat Pharren
6 the same as we treat each other, because she's a female.

7 Q. When you say "he treated them differently," can you give
8 us a little bit more information about that? Was it a good or
9 bad way how he treated them? Explain to Judge Anderson exactly
10 how he treated the Indian employees in comparison with how he
11 treated the non-Indian employees.

12 A. Sure.

13 He spoke to them differently. Whether it be in their
14 native tongue or in English. Again, no different than I'm
15 going to talk to Sean differently than I talk to Pharren. Or
16 I'm going to talk to Shawn or Pharren or Floyd differently than
17 I'm going to talk to Ram or Jigar or Vipin.

18 Q. And the judge doesn't know exactly who --

19 A. Who these people are --

20 Q. -- Shawn or Floyd or Pharren versus Ram and the other
21 people you explained. So let me just kind of walk through your
22 answer, and let's just see if we can be clear and explain to
23 Judge Anderson why you would treat Shawn, say, differently than
24 how you had treated Ram.

25 Shawn, what is his racial background?

1 A. He's black.

2 Q. Ram, what is his racial background?

3 A. Indian.

4 Q. Why would you treat the black person different than the
5 Indian person, Mr. McCray?

6 A. Because he understands what I'm talking about. We have a
7 different way of communicating.

8 Q. Is it fair to say that your experience of how
9 Mr. Annappareddy treated Indians versus non-Indians coincides
10 with how you treat blacks versus Indians?

11 A. Yeah, yeah.

12 Q. Do you treat Indians worse than you treat blacks,
13 Mr. McCray?

14 A. No.

15 Q. And when you saw Mr. Annappareddy working with Indians,
16 did you see him treat his Indian employees worse than he
17 treated his non-Indian employees?

18 A. No. I'm not going to go use the word "worse." No.

19 Let me break it down a little bit better.

20 He spoke to them in their native tongue. He spoke to
21 them -- or, as we use in America, he met them where they are.
22 The phrase, "meet you where you are." Dealt with them
23 differently.

24 Q. Mr. McCray, have you ever had occasion to tell the
25 Government that Mr. Annappareddy wouldn't allow the Indians to

1 piss without their -- without his, rather, permission?

2 A. Yeah.

3 Q. What did you mean when you told that to the Government?

4 A. Okay. Again, I go back to sports, and I use my Jerry
5 Jones analogy or Daniel Snyder analogy. He's more hands-on
6 with them, and that's, you know, part of their culture, that's
7 what they do. So I get it. I understand it. But, again, to
8 the outside person looking in, if I'm not from India, if I'm
9 not from that culture, it's kind of, like, unorthodox to me,
10 but if it works, you know, hey, who am I to say something.

11 Q. When you were there, working with Mr. Annappareddy, when,
12 if ever, did you think that Mr. Annappareddy mistreated the
13 Indian employees?

14 A. Oh, no, no, he didn't mistreat them. He didn't mistreat
15 them. He just dealt with them differently. That's all.

16 Q. When you spoke with the Indian employees, without telling
17 me what you said, were you ever left with the impression that
18 they felt Mr. Annappareddy mistreated them?

19 A. No, no. And that's the thing where you have to be clear,
20 you have to really clarify the difference. Because, again,
21 like I said, none of them ever spoke bad about him. I could
22 literally just sit there and witness them -- because they may
23 have been speaking in their native tongue, and I can witness
24 what I perceive as arguing. And I'm just going by tone and
25 going by facial expressions and hand motions. But if I

1 literally just got finished -- I mean, I'm sorry, if I seen
2 that and, say, 10 minutes later, say, spoke to the reciprocant
3 of that conversation with Reddy, they're still talking highly
4 about him. They're still speaking as if nothing just happened.
5 So, again, like I said, that's just how they deal with each
6 other, I guess.

7 Q. And how did Mr. Annappareddy treat you?

8 A. Oh, man, I think I was on a whole different demographic.
9 He'll tell you. We used to have our monthly meetings. And he
10 would say -- man, he talks to me like I'm his son. We're
11 different. Me and him are different. We -- you know, he kind
12 of almost established that with me early. That's why he could
13 trust me with the deliveries. He knew he could trust me. If
14 he gave a medication or he gave an order or let me know that
15 this has to be dealt this way, he already know, it's gonna be
16 done.

17 Q. I now, Mr. McCray, want to direct your attention back to
18 Plumtree.

19 A. Okay.

20 Q. Please explain to the Court what you know about Lisa
21 Ridolfi back in 2012, 2013, that time period, sir?

22 A. '12 and '13. I mean, I, myself, me, personally, I didn't
23 have any bad dealings with Lisa. Because, again, I kept it
24 business. It's not like I was asking her how did her weekend
25 go or, you know, let's go out and have drinks afterwards and

1 such. So me and her, you know, we didn't have any issues.

2 Q. What was Lisa Ridolfi's role back then?

3 A. I don't know the difference between -- well, I mean, I
4 guess I know the difference, but I don't know what her title
5 was as far as lead or just pharmacist. I just say pharmacist.

6 Q. As a pharmacist back in that time period, again, 2012,
7 2013, at Plumtree, how did you see Lisa Ridolfi treat the
8 Indian employees versus the non-Indian employees?

9 A. She didn't treat them differently, openly to their face,
10 no. She didn't say, per se, you know, talk to them
11 degradingly, or anything of that such. She didn't do anything
12 of that such. But she made her remarks. She said little
13 things, you know, off the record, if you want to call it that
14 or whatever have you or what such.

15 Q. When you say "she made her remarks," explain to
16 Judge Anderson what exactly do you mean by "she made her
17 remarks."

18 MR. PHELPS: Objection. Hearsay.

19 THE WITNESS: She would say --

20 THE COURT: Hold on a minute.

21 MR. FLOWERS: Hold on a minute.

22 Again, this is not being admitted for the truth, but it's
23 certainly being admitted to kind of talk about or characterize
24 who this person was and information that the agent should have
25 known about. As the Court is very well aware, there's been --

1 I don't want to go into the details in front of the witness,
2 but there's been information about what Ms. Ridolfi -- let's
3 just say how she characterized people. I just want Mr. McCray
4 to be able to provide the Court with some information with
5 respect to the characterization.

6 **MR. PHELPS:** Sounds like hearsay, Your Honor.

7 **THE WITNESS:** No, because hearsay would be
8 something --

9 **MR. FLOWERS:** Whoa, whoa, whoa, Mr. McCray --

10 **THE WITNESS:** I'm speaking directly --

11 **THE COURT:** Hold on.

12 **MR. FLOWERS:** The judge will rule, Mr. McCray.

13 **THE COURT:** So all I know is he that said, "She made
14 her remarks." So, presumably, the next thing we're going to
15 hear, a quote from her mouth.

16 **MR. FLOWERS:** That's right. That's right. And so
17 it's not for the truth, because, as we all know -- well, again,
18 without going into the detail, we know that she said one thing
19 about certain folks, which those certain folks were not even
20 that thing. So it's not being offered for the truth. It's
21 being offered, again, to show this is what was in her head --

22 **THE COURT:** Let me just say this: I'm not sure what's
23 coming out, but even if I sustain the objection, I've got to
24 let you make an offer of proof. So let's go ahead and hear the
25 answer, and then I'll sort out whether I should consider it or

1 not.

2 **MR. FLOWERS:** Very well. Thank you, Your Honor.

3 **BY MR. FLOWERS:**

4 **Q.** Mr. McCray, just to reorient us, you indicated that Lisa
5 Ridolfi would make certain remarks. Were those remarks with
6 respect to the Indian employees?

7 **A.** Correct. And let me be clear --

8 **Q.** Hold on. Let me just kind of walk you through this
9 slowly, step by step.

10 Do you recall what those remarks were that she made about
11 the Indian employees outside the presence --

12 **A.** Yes.

13 **Q.** -- of those Indian employees?

14 **A.** Yes.

15 **Q.** Were those remarks made in the time period of about 2012
16 to 2013?

17 **A.** Correct.

18 **Q.** Was she the pharmacist at Plumtree during this time
19 period?

20 **A.** Correct.

21 **Q.** What were those remarks? Please explain to Judge Anderson
22 what those remarks were.

23 **A.** Okay.

24 **THE COURT:** Ask him who they were made to, first.

25 **MR. FLOWERS:** Very well, Your Honor.

1 **BY MR. FLOWERS:**

2 **Q.** Mr. McCray, when you heard these remarks from Lisa
3 Ridolfi, to whom did she make those remarks?

4 **A.** It would be more -- the one person that she would actually
5 make them to, if you want to say directly, would be Sam.

6 **THE COURT:** Would be who?

7 **THE WITNESS:** I don't know his last name, but Sam.

8 **BY MR. FLOWERS:**

9 **Q.** Is it fair to say that Sam was someone who worked at
10 Pharmacare at Plumtree?

11 **A.** Correct.

12 **Q.** Is it fair to say that Sam is a white person?

13 **A.** Correct.

14 **Q.** All right. And what were the remarks that you heard Lisa
15 Ridolfi make to this person Sam, who was an employee, a white
16 employee at Plumtree?

17 **MR. PHELPS:** Objection. Lack of foundation. He
18 didn't say he heard it himself.

19 **THE WITNESS:** Yes, I did.

20 **THE COURT:** All right. If you heard --

21 **MR. FLOWERS:** Mr. McCray, please, unless I ask you a
22 question or the judge asks you a question or even at some point
23 opposing counsel, and they have three, might ask you a
24 question, that's the only time that you can talk just because
25 those are the rules of this world called the courtroom, okay,

1 sir? Thank you.

2 **THE COURT:** So were you present when Lisa made a
3 comment to Sam?

4 **THE WITNESS:** Yes.

5 **THE COURT:** All right. Go ahead. What did she say?

6 **THE WITNESS:** "Once they come over here and take the
7 red dot off their forehead, they act like they run everything."

8 **BY MR. FLOWERS:**

9 **Q.** Can you say that slowly so Judge Anderson can hear it, and
10 also so the court reporter can record it. Please repeat what
11 Lisa Ridolfi said to Sam and you heard.

12 **A.** "Once they come here" -- meaning America -- "and they have
13 the red dot" -- meaning -- I still don't know what that, you
14 know, actually means in their religion -- "once they remove the
15 red dot off of their head, they act as if they run everything."

16 **Q.** Were there other similar remarks that you heard Lisa
17 Ridolfi make about the Indian employees?

18 **A.** Yes.

19 **Q.** What were those other remarks?

20 **A.** Similar. Things like they're incompetent or stupid.

21 **Q.** How did you perceive those remarks?

22 **A.** Bigot, racist.

23 **Q.** How often would Lisa Ridolfi make those types of bigoted,
24 racist remarks?

25 **A.** They weren't often. They weren't often. I'm not going to

1 sit here and say she was Adolph Hitler. She didn't say it all
2 the time. But I heard at least three or four times that I
3 personally, not something from someone else, that I heard,
4 because it was loud enough that I heard it. Maybe she didn't
5 think I was paying attention, but I heard it.

6 Q. When she made these types of racist or bigoted remarks,
7 were they always to this person you called Sam, or were they to
8 other people?

9 A. Just Sam.

10 Q. And when she made these racist or bigoted remarks to Sam,
11 again, this was when she was at the Plumtree store?

12 A. Correct.

13 Q. During the time 2012 to 2013?

14 A. Correct.

15 Q. How many other people at the Plumtree store knew that Lisa
16 Ridolfi made these racist or bigoted remarks in 2012 or 2013?

17 A. Unless they heard it, only myself and maybe two others.

18 Q. And who were the two others?

19 A. I don't remember Shawn's last name -- Shawn Miller and
20 maybe Pharren.

21 Q. Can you explain to Judge Anderson who Shawn Miller was at
22 Plumtree in the time period of 2012 to 2013?

23 A. A fellow driver, another co-worker.

24 Q. Can you explain to Judge Anderson who Pharren was at
25 Plumtree from the time period of 2012 to 2013?

1 A. Another fellow driver employee, co-worker.

2 Q. Can you explain the racial background of Shawn Miller.

3 A. African-American.

4 Q. Can you explain the racial background of Pharren?

5 A. African-American.

6 Q. I'm going to show you --

7 MR. PHELPS: If this is a breaking point, Your Honor,
8 I renew the objection and move to strike the previous
9 testimony.

10 THE COURT: Overruled. I'll allow it for what it's
11 worth.

12 BY MR. FLOWERS:

13 Q. Mr. McCray, if I can, I want to show you what's been
14 marked for identification purposes as Plaintiff's 160.

15 THE COURT: Is this in evidence, or is it a new
16 exhibit?

17 MR. FLOWERS: It is not. I just marked it for
18 identification purposes, Your Honor.

19 BY MR. FLOWERS:

20 Q. Mr. McCray, you should see on your screen there
21 Plaintiff's Exhibit 160. Do you see that there, sir?

22 THE COURT: Has opposing counsel seen it?

23 MR. PHELPS: Yeah, we have, Your Honor.

24 MR. FLOWERS: Yeah, they have. And also, Your Honor,
25 it was in the PowerPoint, which I provided to opposing counsel.

1 It was also an exhibit on the exhibit list, and I can tell you
2 exactly what exhibit it was. So it was provided both by way of
3 the exhibit list, and it was provided in the PowerPoint on the
4 very first day of trial.

5 **BY MR. FLOWERS:**

6 **Q.** Mr. McCray, directing your attention to Plaintiff's
7 Exhibit 160. Do you recognize who is depicted in Plaintiff's
8 Exhibit 160?

9 **A.** Yes.

10 **Q.** Who is depicted in Plaintiff's Exhibit 160?

11 **A.** Lisa Ridolfi.

12 **Q.** Is that a fair and accurate representation of Lisa
13 Ridolfi?

14 **A.** As I remember her, yes.

15 **Q.** Is that a fair and accurate representation of Lisa Ridolfi
16 in or about 2012, 2013?

17 **A.** Yeah, she has aged a bit. Looks like her.

18 **MR. FLOWERS:** Your Honor, at this point I move into
19 evidence Plaintiff's Exhibit 160.

20 **MR. PHELPS:** No objection.

21 **THE COURT:** Without objection.

22 **BY MR. FLOWERS:**

23 **Q.** Mr. McCray, I now want to ask you some questions about
24 Robert Mosley.

25 Do you recall anyone coming to interview you who's

1 African-American from the Government -- let me ask a better
2 question.

3 Do you recall having an interaction with an
4 African-American agent about the Pharmacare investigation?

5 A. Yes.

6 Q. Can you explain to Judge Anderson when that interaction
7 occurred. What year?

8 A. The first would be 2012.

9 Q. And what happened in 2012 with this particular
10 African-American agent?

11 A. The raid.

12 Q. When you say "the raid," you said 2012. You've also said
13 that Pharmacare was closed in 2013 when the raid happened.

14 Which was it 2012 or 2013?

15 A. I'm sorry. Sorry, sorry, sorry. See, I want to keep
16 going back to '12 because that was the year we won the
17 Super Bowl.

18 The raid is when I first -- I was seeing him, that was the
19 raid at my Park Heights location.

20 Q. At your Park Heights location?

21 A. Yes.

22 Q. When you saw him at the raid in 2013 at your Park Heights
23 location, what did you observe about him?

24 A. What I observed was, I guess, he must have thought he, as
25 we call in the streets, made a come-up. Or he got his, I don't

1 know, maybe notch on his Boy Scout badge, because he made a
2 loud comment that myself and the other pharmacists, as well as
3 employees kind of looked at each other and smirked at. He made
4 the remark, "Jackpot. Oh, we gonna need extra time here. It's
5 gonna take a long time to go through all of this stuff."

6 Q. When he made that remark, "Jackpot," what was this person
7 referring to?

8 A. Let me break it down.

9 Park Heights prior -- because I'm familiar with the
10 neighborhood. I know what that store was before it became a
11 pharmacy. Park Heights was a very huge store, so it was not
12 only just a pharmacy. The whole part of the Park Heights
13 location was basically a mom-and-pop dollar store from cups,
14 plates, paper towels, flip-flops, I mean, a little bit of
15 everything. It was candy, I mean, all kind of stuff.

16 But downstairs was the storage area. And it was not only
17 just a storage area just for the Park Heights store, it was the
18 storage area for, should I say, some of the other clinics that
19 Pharmacare, so whether it been BBH, whether it been Mosaic,
20 whether it been Powell, those container bottles that all
21 medications are put in, bubble pack, all stuff that's not only
22 as far as medications, but all of the stuff that goes in the
23 front for the dollar store. So all of the materials for the
24 paper towels -- just supplies. Everything is kept down in the
25 basement of the Park Heights store because it was the biggest

1 location that we had in the city.

2 So it didn't matter that BBH is all the way down almost in
3 South Baltimore, if they're running low on -- again, I don't
4 know what size, I don't know what they go by, but that's where
5 they come at to get the supplies. So it can get shipped from,
6 you know -- we sometimes, drivers were asked, you know, "Maybe
7 if you're on your way down to XYZ place, can you stop these
8 past Mosaic, can you stop these past" --

9 Q. I'm going to jump in. And I don't like to interrupt your
10 answer, but I do want to direct a little bit of your answer and
11 bring out information so Judge Anderson can follow you.

12 A. I'm sorry.

13 Q. When you say, for example, BBH, is it fair to say that was
14 a clinic?

15 A. Correct.

16 Q. Is it fair to say that BBH was storing some of its
17 medications at Pharmacare?

18 A. Not medications. Again, like I said, the bottles that you
19 put the medications in.

20 Q. Very good.

21 A. So whether it been BBH, Powell, there were several
22 clinics, I may be forgetting some of the clinics all of the --
23 Mosaic and things of that such --

24 Q. Mr. McCray, so when you say "BBH," that was a clinic,
25 correct?

1 A. Correct.

2 Q. When you say "Powell," that was a clinic, correct?

3 A. And let me reiterate to make it even more clear.

4 Q. Okay.

5 A. They're not actually, per se, full-fledged clinics. We
6 had employees that, from the hours that they were open, would
7 go there to distribute medications. So they weren't
8 full-fledged by Plumtree or like Park Heights were. They were
9 just different branches, or what have you, that Pharmacare had
10 set up shop in.

11 Q. And if I follow your answer, Mr. McCray, you're saying
12 that down in the --

13 A. Basement.

14 Q. -- basement part of Park Heights, a lot of this material
15 was stored; is that fair to say?

16 A. As well as all of the dollar store material.

17 Q. As well as the dollar store material.

18 Now, I want to take you back to the top of your answer
19 when you see this agent went down there and said "Jackpot."
20 Now, that was the African American agent?

21 A. Yes.

22 Q. What was his name?

23 A. Mr. Mosley or Moley, Mosley.

24 Q. Okay. When Mosley said that, you were explaining to
25 Judge Anderson why that caught your attention. Can you please

1 explain specifically about when Mosley said, quote, "Jackpot,"
2 seeing what was at the Park Heights location, that caught your
3 attention and the attention of others?

4 A. When he said it -- because it was very loud. Again, he
5 said -- because he's trying to say it to his other officers in
6 other agencies, because he had three to four different agencies
7 there. "Jackpot, guys. I think we got it here. We gonna be
8 here a while. It's gonna take a while to go through all of
9 this."

10 We all kind of looked at each other said, "What the hell
11 does he think got?" You would have thought he just found
12 Pablo Escobar's stash. That's literally what -- because,
13 again, in our eyes, we get this is pharmaceuticals. But
14 myself, as well as the other Park Heights employees with the
15 exception of the actual pharmacist that was the oversee person
16 at Park Heights, they're all African-American. So when you say
17 a phrase like that to us, we think, "What do you think you got,
18 drugs in here?" I mean, not medical drugs. Like, "What do you
19 think we have, cocaine, crack, marijuana down there?" Like,
20 that's what we perceiving it as. Like, what does he think is
21 down there?

22 Q. So from your perspective, fair to say that it wasn't a
23 jackpot?

24 A. More than that, it wasn't a jackpot. It was a waste of
25 time.

1 Q. Right. When you say it was a waste of time, is that
2 because what was down there was just all of the appropriate
3 drugs that should be down there?

4 A. They weren't drugs.

5 Q. The appropriate material --

6 A. Right. Right. Exactly.

7 Q. Nothing illegal was down there?

8 A. No.

9 Q. That was your first interaction with this Agent Mosley
10 back in July of 2013; is that fair to say?

11 A. Correct.

12 Q. All right. I want to show you what's been marked and
13 admitted into evidence as Plaintiff's Exhibit 158.

14 Do you recognize Plaintiff's Exhibit 158?

15 A. Yes, I do.

16 Q. Is that the agent who said "Jackpot" in July of 2013 at
17 the Park Heights location when he saw material that should have
18 been at the Park Heights location?

19 A. Correct, correct, yes.

20 Q. All right. What other interaction did you have with
21 Mr. Mosley with respect to the Pharmacare investigation?

22 A. The day that I was actually downstairs in the lobby to
23 come before the grand jury.

24 Q. And can you please explain to Judge Anderson what year
25 that was in.

1 A. That was the following year.

2 Q. Fair to say that's 2014?

3 A. Correct.

4 Q. When you're down in the lobby, about to go into the grand
5 jury, what did Mosley, who's depicted at Plaintiff's
6 Exhibit 158, what did he say?

7 A. He came down to greet me, to bring me up. Introduced
8 himself, shall I say. Because I didn't -- you know, again,
9 I'm, like, this the same guy from last year?

10 But he came down, reintroduced himself. And he explained
11 that he's going to be taking me up, you know, to walk with him,
12 you know, show me to the elevator. And in the elevator --
13 because I wasn't saying anything. I was quiet. And he was
14 just, you know, trying to, you know, "How you doing today, X,
15 Y, Z." Just small talk. And I didn't have any responses to
16 him. And I will never forget, to this day, I swear I won't, he
17 literally looked at me in my face and said, "Hey, Mr. McCray,
18 I'm on your side here. I'm trying to get justice for you
19 guys."

20 And I looked back at him, I said, "What are you talking
21 about justice for us? You took our jobs. You shut something
22 down very good." And that's the face he gave me, right there.
23 That's why I look -- that's exactly how he looked when I told
24 him that. And I don't think he like that when I told him that.

25 Q. Why do you say you don't think he liked that?

1 A. Look at his face. Look at that exhibit. That's exactly
2 how he looked right there. That's why I said, if he still look
3 like that to this day, that's how he looked in that elevator
4 when I told him that when he said, "I'm trying to get justice
5 for you-all."

6 And I said, "Justice for you-all? I'm still looking for a
7 job because of you." You know.

8 Q. Mr. McCray, when he told you that, that he was trying to
9 get justice for you-all, is it fair to say that you didn't
10 think he was engaged in a just process?

11 A. He wasn't getting justice for me.

12 Q. Why?

13 A. And definitely not for any of the fellow contemporaries
14 that I could speak to. Because we weren't doing anything
15 illegal. So when he said the whole phrase of, "I'm trying to
16 get justice for you guys," how?

17 That's what -- I wanted to say, "You gonna give me a
18 paycheck every week or the 15th and the 30th, like I was
19 getting at Pharmacare or something?" But he didn't like that.

20 Q. How do you know he didn't like that?

21 A. Look at the face. That's the face he gave me, and that
22 was the end of the conversation. He didn't have anything else
23 to say to me, no more smalltalk. No more "Did you see the
24 game?" No more -- any of that. No more Ravens. No more talk.

25 Q. Did you have occasion to tell Robert Mosley that nothing

1 illegal was happening --

2 A. That's what I said to him in the elevator. I said, "What
3 do you mean justice for us?" Well, let me rephrase that. Let
4 me rephrase that.

5 Back at the raid when -- because, again, they kept us all
6 in one seated area as they were conducting the searches, as if
7 we were going to hide something or whatever. So as they had us
8 all sitting at the table areas, which was our break area, after
9 he made that statement, like I said, we all look at each other
10 like, "What is he talking about jackpot?" Whatever.

11 So after about, 15, 20 minutes, he comes back up, again,
12 as the officers were still sifting through the boxes and I
13 guess doing whatever they were doing downstairs, tearing it up,
14 he said something maybe probably like, "Is there any other
15 areas where things are kept here?" Or "Is there any other
16 locations or anything where supplies are?" We all laughed and
17 said, "No, that's it. The stuff is downstairs. That's where
18 everything is all kept at."

19 Q. All right. And I've got one last question about
20 Agent Mosley that's in this picture, Plaintiff's Exhibit 158.

21 When, in 2013, did Agent Mosley or any government agent
22 come and interview you, Mr. McCray?

23 A. Never.

24 Q. When, in 2013, as far as you know, did Agent Mosley come
25 and interview any of your fellow drivers at Pharmacare?

1 A. Never.

2 Q. Mr. Mosley, I want to direct your attention to another
3 employee at Pharmacare, a man by the name of Dennis Tokofsky.

4 Can you tell Judge Anderson what, if anything, you know
5 about Dennis Tokofsky?

6 A. Didn't like him. Didn't like him. When he was first --

7 Q. Let me pause you there.

8 Can you explain why you didn't like Dennis Tokofsky?

9 A. Because when he was first introduced to us, he was very
10 pompous. He came as if -- came with some attitude like a drill
11 sergeant, as if we were doing things wrong at Pharmacare and he
12 was about to shift the way how the operations was running or
13 something.

14 Q. How much interaction did you have with Mr. Tokofsky, back
15 in, again, 2012, 2013?

16 A. Very little. Very little. Because he didn't last long.

17 Q. Why didn't he last long?

18 A. Because, again, I go back to the football analogy,
19 maybe -- again, maybe Dr. Reddy, during the vetting process or
20 interview process, I don't know how it works or how he actually
21 got there. But maybe he told him things or made him promises
22 as far as allowing or told he was going to be able to do X, Y,
23 and Z with Pharmacare and as far as logistics and this is done
24 or that is done. And I'm assuming, over time, he was seeing
25 that, no, you still got to check in with Dr. Reddy because

1 you're not just going to go roll and try to change this and
2 change that.

3 And, quite frankly, myself, Shawn, us two in particular,
4 we bucked the system, if you want to call it that. We said,
5 "Sorry, unless it's coming from Dr. Reddy, we're not listening
6 to you."

7 Q. All right. You keep saying Dr. Reddy was like Jerry Jones
8 in how he managed Pharmacare. What exactly do you mean by
9 that?

10 A. Meaning that he tried to keep a tight ship. He tried to
11 make sure that -- he overseen things and tried to make sure
12 that, you know, he had his hand in it. That was his baby, you
13 know. He didn't want to, essentially, allow a foster person to
14 come in and, you know, try to take over things, and I think
15 that's probably where they [sic] heads bumped at.

16 Q. All right. It's fair to say that Dennis Tokofsky was like
17 a foster person trying to take over?

18 A. Basically, yes. And I didn't like him from the beginning
19 because he tried to ask me to do things that I know personally
20 wasn't coming from Dr. Reddy. And I told him "No." And I told
21 him, "Unless Dr. Reddy come and tell me, no."

22 Q. Mr. McCray, I want to show you what has been marked as
23 Plaintiff's Exhibit, for identification purposes, 159. Let me
24 show you what's marked for identification purposes as
25 Plaintiff's Exhibit 159.

1 Do you recognize who's in Plaintiff's Exhibit 159?

2 A. Yes, sir.

3 Q. Who is depicted in Plaintiff's Exhibit 159?

4 A. That's Dennis. That's Dennis.

5 Q. Is that a fair and accurate representation of Dennis?

6 A. Correct.

7 Q. Is that how you remember Dennis when you saw him back in
8 2012, 2003?

9 A. Little bigger than that, looks like he lost weight. But
10 that's him. That's him.

11 MR. FLOWERS: Your Honor, I move into evidence
12 Plaintiff's Exhibit 159.

13 THE COURT: Any objection?

14 MR. PHELPS: No, Your Honor.

15 THE COURT: Admitted without objection.

16 Was 158 moved in?

17 MR. FLOWERS: Yes. 158 should have already been
18 admitted. I'm not sure on what date, but I can find that for
19 you.

20 THE COURT: What was 158?

21 MR. FLOWERS: 158 was the picture of Mosley.

22 THE COURT: I thought it was moved in, but maybe not.

23 MR. FLOWERS: I'll make a motion to move it in.

24 THE COURT: Move it in.

25 No objection?

1 **MR. PHELPS:** No, Your Honor.

2 **THE COURT:** All right. 158 is in without objection,
3 as well.

4 **MR. FLOWERS:** Thank you, Your Honor.

5 **BY MR. FLOWERS:**

6 **Q.** Mr. Mosley -- I'm sorry, Mr. McCray, you referred to Reddy
7 Annappareddy as "Dr. Reddy."

8 **A.** Yeah.

9 **Q.** Do you recall saying that throughout your testimony?

10 **A.** Yeah.

11 **Q.** Ask why are you referring to Reddy Annappareddy as
12 "Dr. Reddy"?

13 **A.** You go through that much medical school, you a doctor to
14 me. My ex-wife, I called her a nurse, even though she was a
15 GNA. I call you a nurse, you know more about nursing than I
16 do.

17 **Q.** Very well, Mr. McCray.

18 Mr. McCray, I really only have kind of one more chapter of
19 questions for you.

20 **MR. FLOWERS:** But before I do, I'd like to ask the
21 Court's indulgence so I can consult my co-counsel and
22 Mr. Annappareddy.

23 **THE COURT:** All right. Go ahead.

24 **MR. FLOWERS:** Thank you, Your Honor.

25 (Counsel conferring.)

1 **BY MR. FLOWERS:**

2 **Q.** All right. Mr. McCray, do you recall having conversations
3 with a female FBI agent?

4 **A.** Yes, yes.

5 **Q.** Do you recall that female FBI agent's name?

6 **A.** Laura something.

7 **Q.** This person that you're calling Laura or something, can
8 you explain to Judge Anderson when you had the first
9 conversation with this Laura who was an FBI agent.

10 **A.** Yes. She came to my home back in December of '13, 2013.

11 **Q.** And when she came to your home in December of 2013, how
12 did you perceive her -- let me ask it this way: How did she
13 react to the information that you gave her about Pharmacare?

14 **A.** Almost similar to Mosley. She didn't like it.

15 **THE COURT:** Let me jump in. Now, your side is going
16 into post-indictment things here.

17 **MR. PHELPS:** Not going into, has been in for quite
18 sometime, Your Honor.

19 **THE COURT:** Right.

20 **MR. FLOWERS:** Again, as I explained, this goes to the
21 state of mind. Through 404(b), it shows a common scheme or
22 plan. In other words, we want to be able to argue that the
23 witness has a certain state of mind before July 23rd, 2013.
24 That state of mind, which has been seriously contested, is
25 corroborated by this 404 --

1 **THE COURT:** I understand what you're saying, but that
2 might be a slippery slope to let in everything the Government
3 wants to come in post indictment.

4 **MR. FLOWERS:** Well, we're in a tough situation, Your
5 Honor, because the Court, you know, hasn't decided to actually
6 rule on it. And I understand the Court's decision, but we're
7 hamstrung. I have the witness here, I've got to put the
8 evidence in --

9 **THE COURT:** Go ahead. Go ahead. We'll debate all
10 that later.

11 **MR. FLOWERS:** Very well, Your Honor.

12 **BY MR. FLOWERS:**

13 **Q.** Again, Mr. McCray, I want to direct your attention to this
14 conversation you had to this FBI agent named Laura, from what
15 you remember, in December of 2013.

16 **A.** Okay.

17 **Q.** You gave that FBI agent information about Pharmacare in
18 December 2013, correct?

19 **A.** Yes.

20 **Q.** All right. What did you tell that FBI agent in December
21 of 2013? And then once you tell me that, I've a follow-up
22 question. So what did you tell this FBI agent in December of
23 2013 about Pharmacare and about Reddy Annappareddy?

24 **A.** Well, I basically just answered her question. I mean, you
25 would have to be more specific about what -- when you say what

1 did I tell her. I mean, she was there for every bit of about,
2 10 minutes or so, what have you. But, I mean, I answered the
3 questions that she asked.

4 Q. Right.

5 Do you recall telling the agent that no fraud was going on
6 at Pharmacare?

7 A. Correct, I do.

8 Q. Do you recall explaining to the agent about how reversals
9 worked at Pharmacare?

10 A. From my understanding, yeah. From the ground level.
11 Anything as far as you got computerized -- I don't know how --
12 that's above my pay grade. But as far as, you know, what we
13 were told, yes.

14 Q. And when you told the agent this information, how did the
15 agent react to the information you gave to the agent?

16 A. I mean, when -- when I explained that to her, she kind of
17 looked a little puzzled, but she did just say -- she kind of
18 asked a little bit further. She wanted me to go in deeper,
19 further into it. But I couldn't explain anything other than
20 just the process. If it wasn't -- you know, the only thing I
21 knew at that time was if we couldn't deliver medications, you
22 know, after a certain amount of time, that they were deemed --
23 they would just be reversed. That was the only thing that I
24 knew.

25 Q. And the agent, when she heard this information, what was

1 her reaction, as you saw it?

2 A. Just a little puzzled. She just kind of seemed as if
3 "That's all? That's all you know? That's it."

4 "That's all, I know." You know what I mean. "What I
5 explained to you, that's all I know."

6 Q. Had this agent interviewed you before the search of
7 Pharmacare in July of 2013?

8 A. No. I've never met any of these people prior. Mosley,
9 the first time I met him was at the raid. And Ms. Laura -- I
10 forget her last name -- the first time I ever seen her was in
11 December of 2013 when she came to my home.

12 Q. All right. Was there another time that you saw her?

13 A. Yes. The day of the grand jury testimony that I had to
14 come to the next year, in '14.

15 Q. In '14.

16 And in '14, the day of the grand jury testimony, again,
17 did you have occasion to talk to her about Mr. Annappareddy?

18 A. No. She -- yes, during -- during the actual questioning.
19 But the only person that I spoke to prior to actually coming in
20 and sitting down and talking to the grand jury was
21 Officer Mosley.

22 Q. Very well.

23 Mr. McCray, I want to show you what's been marked and, I
24 believe, admitted as Plaintiff's Exhibit 146.

25 Do you recognize Plaintiff's Exhibit 146?

1 A. Yes.

2 Q. Is that the agent that spoke with you back in December of
3 2013?

4 A. Correct, yes.

5 Q. Is that the same agent that you told that there was no
6 fraud at Pharmacare in 2013, December?

7 A. Correct, yes.

8 Q. All right. Fair to say that you don't recall the entire
9 conversation that you had with that agent?

10 A. Not the whole conversation, but the gist of it.

11 Q. Fair to say that you characterized that agent as being
12 puzzled when you told her that there was no fraud at
13 Pharmacare, correct?

14 A. Correct. Correct. And, actually, to go a little further,
15 because I didn't -- again, like I say, everything was just
16 hearsay, prior to that, amongst us. When I say "us," I mean
17 myself, Shawn. We were just kind of up in the air. Because,
18 again, we all just worried about -- we was trying to go on
19 interviews and find jobs.

20 But she was the one that was throwing out numbers. You
21 know, like X amount -- millions of dollars in fraud, and X, Y,
22 and Z, did you know that this -- no, I didn't. No, I didn't.
23 That was my responses to her on things. And that's why I was
24 saying she was looking kinda puzzled.

25 **MR. FLOWERS:** Your Honor, Plaintiff has no further

1 questions of Mr. McCray at this time.

2 **THE COURT:** It's time for our morning recess.

3 **THE WITNESS:** Can I use the bathroom real quick?

4 **THE COURT:** Let's take a 15-minute recess.

5 Before we break up, let me pose this question.

6 You can step down, sir.

7 **THE WITNESS:** I'm sorry.

8 (Witness exits.)

9 **THE COURT:** We've heard a lot of testimony from this
10 witness this morning, about post-Lating affidavit events,
11 impressions, conversations, and so forth. It's been offered
12 under Rule of Evidence 404(b), which says -- starts off by
13 saying: Evidence of another crime, wrong, or acts were not
14 admissible to prove a person's character in order to prove that
15 on a particular occasion they acted in accordance with that
16 character. However, such evidence may be admissible for
17 another purpose, such as proving motive, opportunity, intent,
18 preparation, plan, knowledge, identity, absence of mistake, or
19 lack of accident.

20 So the argument is made that this shows the Government's
21 plan. But it seems to me if this is coming in, the door has
22 swung wide open for the Government to bring in counterevidence
23 about their plan and their motive. And I'm not sure that I
24 should receive this evidence, is what I'm saying. I've heard
25 it, but I'm not sure I'm going to consider it.

1 Y'all need to think about that. I don't think we need to
2 nail it down right now. Let's finish with the witness, and
3 then we can decide if it comes in.

4 **MR. FLOWERS:** Very well. And Your Honor, I just
5 wanted to frame it up against the evidence that the Government
6 has already put in post the Lating affidavit. Again, the Court
7 hasn't ruled on it --

8 **THE COURT:** You're talking about the 302s.

9 **MR. FLOWERS:** Absolutely.

10 **THE COURT:** Well, they come in, arguably, on the issue
11 of credibility -- well, we don't need to get into that. We'll
12 talk about that after we finish the witness.

13 **MR. PHELPS:** Very well.

14 **THE COURT:** But understand, I have not admitted those
15 yet. They've been authenticated, but stops right there so far.

16 All right. Let's take a 15-minute recess.

17 **THE CLERK:** All rise. This Honorable Court is now in
18 recess.

19 (Whereupon, a recess was taken from 11:15 a.m. to
20 11:29 a.m.)

21 **THE CLERK:** All rise. This Honorable Court resumes in
22 session.

23 **THE COURT:** I'm going to take under advisement, and we
24 can debate this afternoon, whether I should consider the
25 testimony of this witness post indictment.

1 But for now, let's finish the cross-examination, get the
2 Government's final witness, and then hopefully we'll have some
3 time left over this afternoon.

4 So bring the witness back.

5 Mr. Greenberg, I've got to say, we don't need these
6 unnecessary delays.

7 **MR. GREENBERG:** Your Honor, we apologize. The
8 witness -- I don't know where he is. But I think they're
9 trying to locate him. And I apologize. It looks like he was
10 found -- well, actually, I don't know.

11 **MR. FLOWERS:** Your Honor, he --

12 **THE COURT:** I just said we don't need these
13 unnecessary delays. We're on a tight schedule.

14 **MR. FLOWERS:** Yeah. I just pulled him in. He took a
15 smoke break. I apologize to the Court. Let me go hustle him.

16 (Witness enters.)

17 - - -

18 **CROSS-EXAMINATION**

19 - - -

20 **BY MR. PHELPS:**

21 **Q.** Good afternoon, Mr. McCray.

22 **A.** Good afternoon.

23 **Q.** When were you first contacted about being a witness in
24 this case?

25 **A.** Over -- what, Friday? I would say over the weekend.

1 Q. And when you were a delivery driver at Pharmacare, it was
2 common that it would take multiple attempts to deliver a
3 medication to a patient, correct?

4 A. Sometimes, yes.

5 Q. They could be hard to find?

6 A. Rarely, but sometimes.

7 Q. Some could be incarcerated, right?

8 A. Correct.

9 Q. They could also be in and out of homelessness?

10 A. Correct.

11 Q. They could also be in and out of psychiatric facilities?

12 A. Correct, correct.

13 Q. And there were some occasions where you just couldn't find
14 the patient, right?

15 A. On rare occasions, yes.

16 Q. And what would you do at that point?

17 A. Return it.

18 Q. And how many attempts would you make to try to deliver a
19 medication to a patient?

20 A. Myself, personally, several. If I want to put a number on
21 it, I would say five to seven.

22 Q. And you understand that Pharmacare was offering free
23 delivery to its patients, right?

24 A. Yeah.

25 Q. These patients, they weren't paying for the courtesy of

1 having the medication delivered to them, right?

2 A. No, no.

3 Q. And how were you paid?

4 A. Hourly.

5 Q. So the more you worked, the more money you got paid,
6 right?

7 A. Correct.

8 Q. If you had to work more time to deliver medications to
9 patients because you couldn't find them the first go around,
10 you got paid for that?

11 A. Yeah. It doesn't affect my hours -- let me be clear. We
12 had a pay scale. We only got paid the 15th and 30th. So it
13 doesn't matter, my hours. Whatever days in the month or days
14 fall on that pay period, that's how I got paid.

15 Q. Was everyday an eight-hour day no matter what?

16 A. No.

17 Q. Okay. So you could work --

18 A. Not in the beginning.

19 Q. Towards the end, you could work longer than eight-hour
20 days?

21 A. If I wanted to.

22 Q. And you could get paid for that time?

23 A. Yes.

24 Q. And you did not spend most of your days within the
25 pharmacy, correct?

1 A. No.

2 Q. You said things like billing and reversals, those were
3 above your pay grade?

4 A. Correct.

5 Q. And you testified that you didn't listen to Mr. Tokofsky,
6 right, unless it came -- you only listened to Dr. Reddy; you
7 said that, right?

8 A. When it came to certain things he wanted to change. When
9 I say that, let me explain. When I say I didn't listen to him,
10 one of the main things that he tried to implement was that we
11 had to return the company cars. And I said "No." Because I
12 know that he didn't -- "he" meaning him, Dr. Reddy -- didn't
13 tell me that because he, Dr. Reddy, had to force me to actually
14 take a company car. Because I didn't want one at first.

15 Q. And what was Mr. Tokofsky's job title?

16 A. I don't know what you call it. General manager, maybe. I
17 don't know what. Director. I don't know what the actual title
18 was.

19 Q. And do you consider yourself to be an honest person,
20 Mr. McCray?

21 A. Yes, I do.

22 Q. And when you met with Agent Mosley, you were not going to
23 give him information just to please him, would you?

24 A. I don't give anybody information just to please them if
25 it's not the truth.

1 Q. You didn't do that with Agent Lating either, did you?

2 A. No.

3 Q. You didn't do that in the grand jury, either, did you?

4 A. No.

5 Q. And you didn't do that here today, did you?

6 A. No.

7 Q. Okay. You were not friends with Mr. Annappareddy,
8 correct?

9 A. No. We later developed -- I would later on say yes,
10 that's not my buddy, that's more so like a comrade. That's
11 somebody who I can trust.

12 Q. You thought Mr. Annappareddy was a jerk, right?

13 A. Yeah, I mean, jerks like I was friends, old buddies, old
14 comrades.

15 Q. So you did think he was a jerk?

16 A. Yeah.

17 Q. And, in fact, you thought when you had conversations with
18 Mr. Annappareddy, you needed to wear a tape recorder; isn't
19 that right?

20 A. Let me clear what I mean up.

21 Our relationship is different, okay. Because I'm going to
22 hold him to the fire a little bit. We're different. We have a
23 different dynamic and a different relationship opposed to maybe
24 some other. He may have a different relationship with Shawn.
25 He might have a different relationship with Laura -- or, I'm

1 sorry, Lisa. He may have a different relationship about
2 whoever. That's just how me and him dealt with each other.

3 Q. You thought you needed a tape recorder because you thought
4 Mr. Annappareddy was dishonest; is that right?

5 A. He just didn't follow through when I wanted him to. I'm
6 very impatient. You probably already see that, that's why I
7 interrupt y'all.

8 MR. PHELPS: I'm offering what is marked as Defense
9 Exhibit 99 for identification purposes now.

10 BY MR. PHELPS:

11 Q. Mr. McCray, isn't it true --

12 MR. FLOWERS: Excuse me, Mr. Phelps, do you have a
13 copy?

14 MR. PHELPS: Sorry.

15 MR. FLOWERS: Is this the grand jury transcript?

16 MR. PHELPS: It is.

17 MR. FLOWERS: Don't worry about it, I gotcha.

18 BY MR. PHELPS:

19 Q. So, Mr. McCray, could you go ahead and read there,
20 starting at line 8 for me, what you told the grand jury?

21 A. You said 8?

22 Q. Line 8, for me, yes.

23 MR. FLOWERS: Judge --

24 BY MR. PHELPS:

25 Q. The question is:

1 "QUESTION: When you say 'with promises,' what are you
2 talking about?"

3 A. Okay.

4 MR. FLOWERS: Objection, Your Honor. There hasn't
5 really been a foundation laid that would show Mr. McCray that
6 this is, in fact, his grand jury transcript. So if he could
7 just lay the foundation, let him see and orient himself into
8 this document as opposed to --

9 THE COURT: Is there any dispute that this is the
10 authentic transcript?

11 MR. FLOWERS: Well, I have my version of it. I
12 haven't looked at his version.

13 THE COURT: Well, just ask him, first, if he remembers
14 what he said to the grand jury, and then go from there.

15 BY MR. PHELPS:

16 Q. Mr. McCray, did you testify in front of the grand jury on
17 Tuesday, February 4th, 2014?

18 A. Yes.

19 Q. Okay. And a female attorney, Ms. Pascale, she asked you
20 questions when you were in the grand jury; is that right?

21 A. I don't remember her name, but yes, I was questioned by a
22 female attorney.

23 Q. Okay. And have you seen a copy of your grand jury
24 transcript before coming here today?

25 A. No.

1 **MR. PHELPS:** Your Honor, I would just -- I don't think
2 there's any dispute that this is actually his grand jury
3 transcript.

4 **THE COURT:** All right. Go ahead. You may proceed.

5 **BY MR. PHELPS:**

6 **Q.** Could you go ahead and read -- starting at -- the question
7 at line 6 is:

8 "QUESTION: When you say 'with promises,' what are you
9 talking about?"

10 Go ahead and start reading at line 8, for me, please.

11 **MR. FLOWERS:** Your Honor, if he could just --
12 Just let us know what page you're on.

13 **MR. PHELPS:** Sorry. Page 9, line 8.

14 **MR. FLOWERS:** Thank you.

15 **THE WITNESS:** Okay. I said:

16 "ANSWER: Such as if you were a new employee and you were
17 hired under the premise that, you know -- which is standard and
18 typical, I guess, you know you have a 90-day probationary
19 period, and after your 90-days probationary period, you know
20 your pay will go to XYZ. You would have to stay on there for
21 four, five, six, seven months afterwards till you automatically
22 get your raise or bonuses, you know, things of that nature.
23 You would have to say to Dr. Reddy about it, because if not,
24 then it'll fall by the wayside. And then he'll also lie and
25 say he never said it in the beginning. That's why I said you

1 really have to stay on top of whatever the guy already told
2 you."

3 **BY MR. PHELPS:**

4 **Q.** And so -- I'm going to interrupt you.

5 You did think you needed to wear a tape recorder when you
6 spoke to Mr. Annappareddy because you thought he would lie.

7 **A.** I'm talking about our relationship. So this goes on now.
8 If I tell him something right now -- oh, I'm sorry, let me
9 rephrase that.

10 If he says something to me right now, and maybe next week
11 he says something totally different, I'll tell -- I'll say,
12 "What do you want me to have, a tape recorder on me or
13 something? Because you told me X, Y, Z, blah, blah, blah, or
14 whatever." That's how our relationship is.

15 **Q.** But when you presented that relationship to the grand jury
16 in February 2014, you said it was a lie, right?

17 **A.** Speaking of our relationship. I'm not talking about
18 something company-wide, no.

19 **Q.** So he would lie to you, just not within the company?

20 **A.** When I say "lie," let me make it clear, he didn't follow
21 up in my time frame or what I thought should be -- it should be
22 done.

23 Such as when I said the part -- if you control back down,
24 if you put the paperback down, when I said as far as four,
25 five, six, seven months afterwards, you would actually get your

1 raise, X, Y, and Z. Sometimes I just can't get ahold of him to
2 hold him to get to that, to hold him to that. But so maybe
3 some of that was on me. But yes, yes.

4 Q. Okay. You didn't say to the grand jury that you would
5 have trouble getting ahold of him, you said --

6 A. No, no, no, I didn't say get ahold of him. I mean, when
7 you've got 15 things going on at one time, whatever have you,
8 sometimes he probably didn't have time, I guess, to sit there
9 and tie me down -- or I mean, have him to tell me, "Look,
10 number one, you said X, Y, and Z, blah, blah, blah."

11 Because if it's said out in the open or what have you or
12 if it's about something else, then it turns into, you know,
13 "Uh-oh. Well, he might promise me this, he might promise me
14 that, he might promise me that," or whatever. So maybe that
15 may open up a can of worms for everybody or something. They
16 might told him different things or something.

17 Q. I'm going to read the next question. It says:

18 "QUESTION: And I believe before we came into the grand
19 jury you said you felt like you had to have a tape recorder."

20 And then go ahead and read your answer for me. On
21 line 22.

22 A. Okay.

23 "ANSWER: You had to because he would tell you he would
24 never say that, you know. So you also have to, 'I'm not just
25 making this stuff out of thin air, you're the one that said I

1 would get a raise or you were the one that said that I would,
2 you know, get this or that.'"

3 Q. Okay. And was that true?

4 A. Okay. Yeah.

5 Q. Mr. McCray, when you were in the grand jury, you were
6 asked a lot of questions about a September 2013 meeting you had
7 at your house with Mr. Annappareddy. Do you remember that?

8 A. Yeah, yes.

9 Q. And this was after Mr. Annappareddy had been charged with
10 a crime, correct?

11 A. I didn't know that.

12 Q. But the conversation that you had with him was after the
13 raid.

14 A. Correct. But I didn't know he was charged with anything.

15 Q. It was after the raid.

16 A. Doesn't matter. I didn't know he was charged with
17 anything.

18 Q. Okay. I'm just trying to get timing, that's all.

19 A. Okay, yeah.

20 Q. And he came to your house, right?

21 A. Correct.

22 Q. And he came to your house unannounced, right?

23 A. Correct.

24 Q. He didn't tell you he was coming?

25 A. No, no.

1 Q. And, in fact, when you were asked in the grand jury if you
2 expected him to come to your house, you didn't say "No," you
3 said, "Hell no," right?

4 A. Right.

5 Q. Why do you say "hell no"?

6 A. What boss -- I've never had a boss come to my house.

7 Q. But he was now.

8 A. Okay.

9 Q. Why was he there?

10 A. When he came there, the first thing he asked about -- the
11 first thing came out of his mouth was, do I know of any of --
12 whether it been Shawn, Pharren, Floyd or anybody, do you know
13 of anybody that has any of the cars that they haven't turned in
14 yet. Because -- they're not bought. They're still leased.
15 And he still owes money for that. And clearly, he didn't have
16 any money. So the last thing he needed was another debt over
17 his head.

18 Q. And one of the things he asked you was, were you talking
19 to other employees from Pharmacare, right?

20 A. Yeah.

21 Q. Shawn Miller, right?

22 A. Okay.

23 Q. He asked you if you were talking to Lisa Ridolfi?

24 A. No. You say did he ask me if I was talking to Lisa
25 Ridolfi?

1 Q. Yes.

2 A. I don't recall that.

3 Q. Okay. But he was asking you about any conversations that
4 you may have had with other Pharmacare employees, correct?

5 A. Okay. Yes. For the car.

6 Q. Well, you didn't talk about the cars in your grand jury,
7 did you, Mr. McCray?

8 A. I wasn't asked, either.

9 Q. And he asked you that if you did talk to other employees
10 at Pharmacare, that you ask them about their mindset, right?
11 Do you recall that?

12 A. Yep.

13 Q. What was your understanding about that request from
14 Mr. Annappareddy?

15 A. What was our mindset because how did I land. Because when
16 he came to my home at the time, I still -- well, I had
17 something that lasted a few weeks or what have you since that
18 July raid or what have you. So he wanted to make sure after,
19 of course, about the cars, he was asking -- because, again, my
20 wife and Dr. Reddy -- he knew my family. I been to his home
21 several times for parties and things of that nature. So he
22 asked how was my mindset, have I spoke to anybody else from
23 Pharmacare. How is everybody doing.

24 Because prior to this, no one has -- everything was just
25 hearsay between us, you know, for the few folks that was still

1 in contact. So we didn't really know anything other than, "Did
2 you find a job yet? Is that place where you're working at, are
3 they hiring?" Things of that such. Anything other than that
4 was just rumors.

5 **Q.** But, Mr. McCray, when he made the unannounced visit to
6 your house and asked about the mindset of other employees, he
7 was not asking about their well-being, he was trying to get
8 information about his case, right?

9 **A.** That's what you said.

10 **MR. FLOWERS:** Objection. Submits facts not in
11 evidence. There is absolutely no evidence of that. There's no
12 reasonable basis to ask that question.

13 **THE COURT:** Overruled.

14 Ask the question again.

15 **MR. PHELPS:** Can I have the court reporter read it
16 back, please.

17 (Reporter read back as requested.)

18 **THE WITNESS:** No, that's what you said.

19 **BY MR. PHELPS:**

20 **Q.** Okay. Let's take a look at Page 17 of your grand jury
21 transcript. And it says -- it says, the question is:

22 "QUESTION: Did he ask you to do anything on his behalf?
23 Did Mr. Annappareddy ask you to do anything on his behalf" --

24 **MR. FLOWERS:** Objection. Can you let us know where
25 you're reading?

1 MR. PHELPS: Sure. Page 17, line 3.

2 MR. FLOWERS: Thank you.

3 BY MR. PHELPS:

4 Q. "QUESTION: Did he ask you to do anything on his behalf?
5 Did Mr. Annappareddy ask you to do anything on his behalf,
6 maybe talk to other witnesses?"

7 And go ahead read your answer, please.

8 A. "ANSWER: He didn't say get in contact with them. He just
9 sort of said -- he just sort of said that if you speak to them,
10 you know, ask them, you know, like, what are they" --

11 Q. Could you read the whole thing out loud, please.

12 A. I'm trying to, but what are those what do the lines mean?
13 I've seen it like --

14 Q. How about this, I'll read it, and you tell me if I read it
15 correctly. Okay?

16 A. Well, no, because I need to know what those lines are.
17 Because I don't like the way when things like that -- that's
18 the second one you-all had me read. What do those lines mean?
19 Because there had to be some words in there. Because it
20 doesn't even phonetically make sense.

21 Q. Okay. Well, how about this. You testified in front of
22 the grand jury, right?

23 A. Right.

24 Q. Okay. And you understood that everything that you said in
25 the grand jury was being recorded, right?

1 A. Then what does that mean, then?

2 Q. What does what mean?

3 A. In between "they" and "you know" right there on 20.

4 Q. Uh-huh.

5 A. Something is missing there. What does that mean?

6 Q. You think that there were words that were deleted from
7 your transcript?

8 A. I don't know what's going on. The same way up here on 6,
9 it says "to any maybe not only." Like, fill in the whole
10 thing.

11 THE COURT: I assume the recordings of the grand jury
12 are still available?

13 MR. PHELPS: I don't know that to be true, Your Honor.

14 THE WITNESS: That's fine.

15 BY MR. PHELPS:

16 Q. Okay. Can we agree, Mr. McCray, that the highlighted
17 words say " . . . find out maybe what their mindset is or what
18 have you, because he really doesn't understand, you know,
19 what's going on, why are they bringing these charges against
20 him. He did nothing wrong."

21 A. Okay.

22 Q. Did I read that right?

23 A. Yeah, okay. Yes.

24 Q. And you were asked a lot of questions about this visit you
25 had with Mr. Annappareddy during your grand jury testimony,

1 right?

2 A. Pointed.

3 Q. What was your understanding of why you were there to
4 testify in the first place?

5 A. To put him away.

6 Q. And was there something about the meeting with
7 Mr. Annappareddy in December 2013 that you thought was relevant
8 to the government?

9 A. No.

10 Q. You described Mr. Annappareddy as a "meddlesome owner,"
11 correct?

12 A. Yeah, yeah. That's the word I used, yes.

13 Q. And you told the grand jury that Mr. Annappareddy will
14 "put people in places, but wouldn't -- wouldn't allow them to
15 do their jobs," right?

16 A. Yes.

17 Q. And that includes Mr. Tokofsky, right?

18 A. Yes. And let me be clear, that's the reason why I said I
19 didn't like him. When I said "put people in places," they
20 don't -- him and there was another -- I forget what they're
21 called -- general managers, directors, whatever their official
22 title was called, he was also of Indian descent, I forget his
23 name, because he also didn't last long, maybe about a month and
24 half, if that.

25 He came in also and tried to change things up and tried to

1 switch the logistics a little bit or what have you. And
2 eventually, that went to a day or two later where it was going
3 back to what we normally did. Because, again, I already know
4 what was going on. They were trying to change things --

5 Q. Okay. Is there any doubt in your mind that the "they" who
6 were trying to change things were hired by Mr. Annappareddy?

7 A. Yeah.

8 Q. Okay. So the people he hired couldn't actually change
9 things, right? That's your testimony.

10 A. Not to the extent what they were trying to do. When it
11 came to things that affected me directly or us, meaning
12 drivers. Because when I say "me," I mean, things such as, like
13 I say, company cars or not to turn off our cell phones when we
14 got off. Things of that such. Or from now on, when we come to
15 the pharmacy, that we have to go to this place first -- just
16 stupid stuff.

17 So if they, like I said, have some kind of agreement or
18 whatever have you when they came there, and then I guess they
19 probably seen it was a little more tougher to implement those
20 things or what have you, I guess that's -- you know, what I
21 mean when I say, sorry, he got his hands on it. You ain't
22 gonna be able to do everything you want to do.

23 Q. "He's got his hand on it" is Mr. Annappareddy, right?

24 A. Yeah, yeah.

25 Q. You testified on direct examination that Mr. Annappareddy

1 treated the Indian employees differently than American
2 employees because of the shared culture that they had, right?

3 A. Correct.

4 Q. In fact, the reason he treated them differently is because
5 he had leverage over them because he had control over their
6 visa; isn't that right?

7 A. Yeah, that's what I said, yeah.

8 Q. You said that in the grand jury.

9 A. Yeah, that's what I thought.

10 Q. You said that:

11 "ANSWER: He could control the Indian employees because
12 they were here on visas and the Americans could just get up and
13 leave."

14 That's what you told the grand jury.

15 A. Okay, yeah, okay.

16 Q. Do you recall having a conversation -- or testifying in
17 the grand jury about whether or not Vipin Patel and Jigar Patel
18 were rogue employees?

19 A. Reiterate. Go a little further.

20 Q. Do you recall discussing in the grand jury whether or not
21 Vipin Patel and Jigar Patel were rogue employees?

22 A. Okay. If you say so.

23 Q. I'm asking you if you recall, that's okay if --

24 A. No.

25 Q. Okay.

1 A. Because if I was asked that, then I would have said no.

2 Q. All right. And so let's go ahead and look at Page 23,
3 line 2. And that's exactly what you said, right?

4 You were asked: "QUESTION: What was your impression of
5 whether Vipin or Jigar would be considered rogue employees?"

6 And you said: "ANSWER: Impossible."

7 Right?

8 A. Right. I would say no, right.

9 Q. And you said: "ANSWER: Because nothing is done there
10 without his knowledge."

11 A. Correct.

12 Q. And you said, and when asked a question: "QUESTION: Did
13 you say earlier Indians can't take a piss without Reddy's
14 permission?"

15 Your answer was: "ANSWER: That's probably the only thing
16 they could do."

17 Right?

18 A. Right.

19 Q. Do you recall testifying in the grand jury about this
20 unannounced visit with Mr. Annappareddy in December 2013 where
21 the topic of medications found at an Edgewood house was
22 discussed between you and Mr. Annappareddy?

23 A. Vaguely, vaguely. I remember something about that or
24 whatever have you, vaguely.

25 Q. This is Page 25, line 17, the last question is:

1 "QUESTION: When Reddy was at your home in December of
2 2013, he told you about medications that were found at a house
3 in Edgewood."

4 And you answered: "ANSWER: Yeah."

5 And you were asked to explain that to the grand jury.

6 You said: "ANSWER: Yes. He has a few houses that he
7 kept. Some of them would just be for males and some just for
8 females."

9 And it said: "QUESTION: Kept who in?"

10 And you said: "ANSWER: The Indians. Because, like I
11 said, they work on visa."

12 And then there's this discussion a few lines down about
13 the house in Edgewood.

14 A. No, go back up.

15 Q. Sure. I'll let you read it.

16 A. There go one of them line things again.

17 Q. No, you do it.

18 A. Yeah, y'all gonna have to get the video recordings or what
19 have you. Because I said that he provides houses for them.
20 The females stayed in one house; the males stayed in another
21 home. Because again, they're new to America. Half of them
22 don't speak English fluently.

23 Q. But you recall, a few lines back, the topic of discussion
24 at this point was about medications that was found at one of
25 these houses, right?

1 A. Okay.

2 Q. That's what, on the previous page, is on line 17 through
3 21.

4 A. Okay.

5 Q. So I'm going to go down to your answer on line 14 of
6 Page 26.

7 And you told the grand jury: "ANSWER: But the
8 medications -- he said they found a few bags of medications,
9 you know, at that house. He said 'I don't know, you know,
10 where that stuff come from.'"

11 Right?

12 A. Okay.

13 Q. And this is a house in Edgewood where Vipin and his wife
14 stayed, right?

15 A. Okay. Yeah.

16 Q. Do you believe that Mr. Annappareddy didn't know how drugs
17 got into one of these houses?

18 A. Yeah.

19 Q. You believe him?

20 A. Uh-huh. I do. Because, again, when I say -- I'm sorry I
21 keep going to sports. But when I say the Jerry Jones
22 analogy -- and again, this is not, again, like I said, to say
23 anything bad about Vipin, Jigar, Ram, any employee. You think
24 Jerry Jones knew every time that Mike Irving got high. I'm
25 just asking.

1 Q. You would agree with me that Mr. Annappareddy was an
2 extraordinarily hands-on owner, right?

3 A. But you didn't answer my question.

4 Q. Okay. I'm the one asking questions --
5 (Crosstalk.)

6 A. I know I'm -- but I'm just saying, do you think that Jerry
7 Jones knew every time that Mike Irving got high?

8 THE COURT: Mr. McCray, I'm sorry, you don't get to
9 ask questions.

10 THE WITNESS: That's not fair, then.

11 THE COURT: You can explain your answer in full
12 anytime you want to.

13 THE WITNESS: Okay.

14 THE COURT: I will not let him cut you off with a
15 question. But you can't pose questions back the other way.

16 THE WITNESS: Okay.

17 THE COURT: Go ahead.

18 BY MR. PHELPS:

19 Q. You said it was impossible that Vipin and Jigar were rogue
20 employees, right?

21 A. That's what I had.

22 Q. And we agree that it would look really bad if
23 Mr. Annappareddy was keeping drugs at the house, right?

24 A. Okay.

25 MR. PHELPS: No further questions.

1 **THE COURT:** All right.

2 Any additional?

3 **MR. PHELPS:** Your Honor, can I move Exhibit 99 into
4 evidence.

5 **THE COURT:** That's the grand jury transcript?

6 **MR. PHELPS:** Yes, Your Honor.

7 **THE COURT:** All right.

8 Any objection?

9 **MR. FLOWERS:** No objection, Your Honor. I would like
10 to move in exhibit -- Plaintiff's Exhibit 156, which is the
11 grand jury testimony. I'm going to ask him some questions
12 about the grand jury testimony.

13 **THE COURT:** Is this the same one the Government
14 just --

15 **MR. FLOWERS:** Yeah. It's a different number.

16 **THE COURT:** So we've got the same transcript with two
17 different numbers?

18 **MR. FLOWERS:** What's his number, 99?

19 **MR. PHELPS:** I believe it's Defense 99.

20 **MR. FLOWERS:** We'll use it as Defense 99.

21 **THE COURT:** Is the Exhibit 99 the full grand jury
22 transcript or just pertinent pages?

23 **MR. PHELPS:** It should be the full one, Your Honor.

24 **THE COURT:** All right. Well, let's keep with 99, just
25 to keep the record clear.

1 **MR. FLOWERS:** Okay. Your Honor, I'm going to refer to
2 their version of the grand jury exhibit as Defense Exhibit 99,
3 which has been admitted into evidence. Everybody hold me
4 accountable because I've got a different marking on it.

5 - - -

6 **REDIRECT EXAMINATION**

7 - - -

8 **BY MR. FLOWERS:**

9 **Q.** Mr. McCray, Mr. Phelps asked you a series of questions
10 about Jigar and Vipin being rogue employees because of what
11 appears in your grand jury testimony; do you recall that line
12 of --

13 **A.** Yes.

14 **Q.** -- questioning?

15 **A.** Yes.

16 **Q.** All right. Can you explain to Judge Anderson what you
17 meant by them being "rogue employees" back in 2014 when you
18 were before the grand jury?

19 **A.** So when you say "rogue employees," meaning, basically,
20 they were just able to just fly under the radar and have an
21 agenda and just do something that they want to do without him
22 having any knowledge. And that is virtually impossible.

23 **Q.** Why did you use the term "rogue employees" in the grand
24 jury, Mr. McCray?

25 **A.** Because that implies that somebody can just fly off and do

1 whatever they want to do.

2 Q. Is it your testimony that they were not rogue employees?

3 A. No.

4 Q. Why do you say that, sir?

5 A. Because if they were rogue employees, they could have done
6 a lot worse than what is being accused. If they were really
7 rogue employees, I mean, these guys are pharmacists as well.
8 They're behind the counter. They're behind, as they say, the
9 scenes in Hollywood, just like he could do. So if they were
10 rogue employees, he should be in jail right now.

11 Q. How did you see Mr. Annappareddy treat Jigar, the rogue
12 employee Jigar, the so-called rogue employee Jigar, how did he
13 treat him?

14 A. To be honest, I almost forget about this, because see,
15 this was not asked back in 2014. Jigar was supposed to be the
16 heir apparent. I remember Jigar was in school during the time.
17 Things were being set up for Jigar because he attained his
18 license and going to school. Jigar was supposed to be the heir
19 apparent.

20 Q. Mr. McCray, can you look in the courtroom and tell
21 Judge Anderson whether you see Jigar in the courtroom. You can
22 stand up, if you need to, sir.

23 A. Yeah, I see him.

24 Q. All right. Is it fair to say that Jigar is in the
25 courtroom today?

1 A. Yes.

2 Q. The "heir apparent," as you call him?

3 A. Yeah, he was the next man up. Or at least branch off and
4 have his own. He was supposed to be the heir apparent.

5 Q. Mr. McCray, there were a bunch of questions about your
6 testimony in the grand jury saying that Mr. Annappareddy
7 somehow controlled the Indian employees because he had access
8 to their visas and their housing; do you recall --

9 A. Yeah.

10 Q. -- that line of questioning?

11 A. Yes, yes.

12 Q. Mr. McCray, when you were working for Mr. Annappareddy,
13 did you ever see Mr. Annappareddy send back to India one of his
14 employees because they had not followed what he told them to
15 do?

16 A. No. In fact, we used to get periodic emails whenever
17 someone would obtain their citizenship. And we would all, you
18 know, have celebrations for them.

19 Q. When did you ever see Mr. Annappareddy try to control the
20 visas of the Indian employees who worked for him?

21 A. I mean, I never seen it. I mean, I never seen it. It was
22 more so, again, like I said, figure of speech. And that's the
23 reason why I said things like they weren't able to do anything
24 and probably was only just able to take a pee. I'm sorry for
25 the vulgarity. But they were only to take a pee or what have

1 you.

2 Again, it goes back to what I said, I'm not going to speak
3 with you, the Judge, the same way I'm going to talk to you.
4 I'm not going talk to either one of y'all the same way I'm
5 going to speak with the stenographer. That's just how it is.
6 Let's grow up, people. This is how it is.

7 If you are white, you are not going to speak to your black
8 friends or use certain terms or use certain things the same way
9 that you would with your other white friends. The same way I
10 am not going to speak to a female -- if I have any respect,
11 anyway -- the same way that I'm going to speak to my male
12 counterparts. I'm not going to go talk to one of my white
13 friends or have certain jokes with him that I'm going to have
14 with my black friends. It's really life. You know, that's how
15 it is. Grow up.

16 Q. Mr. McCray, you also were asked a series of questions
17 about the housing that Mr. Annappareddy provided for his Indian
18 employees.

19 A. Yeah.

20 Q. Explain to Judge McCray -- or Judge Anderson, rather --

21 A. I wish I was --

22 Q. -- Mr. McCray, about the housing Mr. Annappareddy offered
23 you.

24 A. Yeah. He actually offered me a home on Pratt Street, my
25 wife and I, during the time we were looking to move. Because

1 during the course of between -- and being employed with
2 Pharmacare and during the time of the raid -- after the raid,
3 should I say, I had moved. My wife and I, we were looking to
4 move from an apartment to a home. And during that time,
5 Dr. Annappareddy was showing me offers and letting me know
6 whether it had been -- it was a little better than a house, but
7 still, to me, classified as an apartment. Maybe a position to
8 move there or on Pratt Street. Or, I wish I took him up on it
9 now, maybe even moving out Harford County. And, you know,
10 maybe somewhere out in Edgewood. And we could, you know, look
11 into a townhome opportunity out there because, of course, he
12 had opportunity or resources, you know, to reach out to
13 landlords or maybe even acquire, if need be, a home out there.

14 But I -- I guess immaturity, I didn't want to leave the
15 city. I wished I took him up on it now, because I'm trying to
16 get the heck out of the whole state.

17 Q. Is it fair to say that Mr. Annappareddy offered you that
18 house --

19 A. Yes.

20 Q. -- to try to help you out as a Pharmacare employee?

21 A. Yes. And this was going back way before the raids. This
22 was back in like, '11, 2012. Yes.

23 Q. Is it fair to say that he offered other people houses who
24 were Pharmacare employees to try to help them and take care of
25 them?

1 A. Yeah, yeah.

2 Q. Mr. McCray, looks like I've got one more line of
3 questions.

4 MR. FLOWERS: Before I go down that line, Your Honor,
5 may I consult with Mr. Annappareddy here and Mr. Greenberg
6 before I finish up?

7 THE COURT: Go ahead.

8 (Counsel conferring.)

9 BY MR. FLOWERS:

10 Q. Mr. McCray, you were asked a series of questions by
11 Mr. Phelps about Mr. Annappareddy showing up at your house; do
12 you recall that line of questions?

13 A. Yes.

14 Q. When Mr. Annappareddy showed up at your house, did he ever
15 ask you to lie to the government?

16 A. Never.

17 Q. When Mr. Annappareddy showed up at your house, did he ever
18 tell you to hide the truth from the government?

19 A. No. He told me to tell the truth.

20 Q. He told you to tell the truth.

21 Why did he tell you to tell the truth, Mr. McCray?

22 A. There was nothing to hide.

23 Q. Why was there nothing to hide?

24 A. Because he did nothing wrong. None of us did. We never
25 forged signatures. We never hid medicine. There was nothing

1 to lie about.

2 Q. Right.

3 When Mr. Annappareddy showed up to your house, I believe
4 it was in December of 2013, and he inquired about his other
5 employees, did he ever tell you to tell his other employees to
6 lie?

7 A. No.

8 Q. Did he ever tell you to tell the other employees to
9 obstruct justice?

10 A. No.

11 Q. You explained a little bit, Mr. McCray, that the reason
12 Mr. Annappareddy showed up at your house was to try to get back
13 the cars from another driver -- the car from another driver; is
14 that correct?

15 A. Correct. Also, let me also, I guess, put a punctuation
16 off on it as well. The one thing that was left out that nobody
17 ever asked that, like I said, looking at it, it was definitely
18 something -- even though I get it, there was nothing he could
19 do, he also came to apologize.

20 Q. What was he apologizing about?

21 A. He felt that -- because he's not stupid. He's human. He
22 knew everybody lost their jobs. I mean, I get it. It was
23 probably six months later down the line now. But he was hoping
24 that everybody, you know, is doing better, but he wanted to
25 apologize because of what we suffered.

1 Again, despite what you may think or what have you,
2 especially for, like, females, and what have you, but that's
3 kind of a scary scene to have 30 or 40 officers with all
4 different kind of companies and vests. Like I said, I had
5 never even heard of HHS prior to that. But they had FBI, DEA,
6 state troopers, and HHS officers, you know, all questioning
7 you, guns everywhere, and this and that. We was held at Park
8 Heights for an hour and a half while they went downstairs on a
9 goose chase. And he wanted to apologize because he felt as
10 though this was all unjust, and he felt that what not just him,
11 but what was going on to us was unfair.

12 Q. He came to apologize because of what happened to you-all?

13 A. Yes. He said he feels as though this is a witch hunt.

14 MR. PHELPS: Objection, hearsay, Your Honor.

15 MR. FLOWERS: This is responsive to --

16 THE COURT: Overruled.

17 BY MR. FLOWERS:

18 Q. You may continue your answer, Mr. McCray.

19 A. He feels as though -- I'm sorry, he felt as though that
20 this was wrong, what's going on to him, but he knows that it
21 affected us too, so he wanted to apologize for that.

22 Q. Did he say he was innocent?

23 A. Yes.

24 Q. Did you --

25 A. Yes. Because I knew he didn't do anything wrong. I knew

1 he didn't. And still, to this day, know he didn't do anything
2 wrong. Because if he did, he wouldn't be right here, trying to
3 fight for his name.

4 Q. Mr. McCray, I've just got one last set of questions for
5 you, sir.

6 When Mr. Annappareddy showed up at your house in December
7 of 2013, showed you his wrists. What did he have on his
8 wrists?

9 A. Slits that were healing. Slit wrist that, obviously, you
10 know, he tried to kill himself.

11 Q. Why did he try to kill himself?

12 A. Stressed out --

13 MR. PHELPS: Objection --

14 THE WITNESS: Stressed out. He just didn't think that
15 he had a chance. He felt as though he was wrongly being
16 accused. And even though he had not been in the country as
17 long as I been here or alive, he felt as though it was going to
18 be an uphill battle because he knew people that, unfortunately,
19 of color, don't really get much of a fair shake here in our
20 justice system. And when he said that, I totally agreed with
21 him. I totally agreed with him, because I, as a man of color,
22 can definitely identify with that.

23 So he felt as though that he wants to try to fight, but he
24 didn't have any means as far as money, because everything was
25 frozen, assets are gone. But he just kept saying, "I'm going

1 to fight this in some of kind of way, shape, or form," and he
2 wanted to apologize to us because he knew that all our lives
3 were uprooted from the events that happened in July of --
4 earlier that year.

5 **MR. FLOWERS:** Your Honor, I have no further questions.

6 **THE COURT:** All right.

7 Anything further?

8 **MR. PHELPS:** No, Your Honor.

9 **THE COURT:** Thank you, sir. You may step down.

10 You're excused. Thank you.

11 **THE WITNESS:** Thank you.

12 (Witness exits.)

13 **THE COURT:** All right. Do we have the Government's
14 witness present?

15 **MS. FARBER:** Yes, Your Honor.

16 **THE COURT:** All right. Let's go ahead and call the
17 Government's witness in.

18 **MS. FARBER:** The defense calls Jeremy Dykes.

19 **THE COURT:** Let me just say, while we're waiting on
20 the witness, I don't mean to imply that I've accepted all this
21 testimony. I'd rather go ahead and get the witness up and
22 down, and then use the cushion that we have this afternoon to
23 debate how much should be kept out, if anything, and also talk
24 about these two 302s. But I'd rather to move forward at this
25 point.

1 MS. FARBER: Great. Thank you, Your Honor.

2 MR. GREENBERG: Your Honor, just briefly, before the
3 witness comes in, there's a Fourth Circuit case on opening the
4 door that we believe is --

5 THE COURT: I said we'll discuss that this afternoon.
6 You can go ahead and give us the cite, if you want to.

7 MR. GREENBERG: I'll email it.

8 THE COURT: That's good. That's good.

9 (Witness enters.)

10 THE CLERK: Sir, please remain standing and raise your
11 right hand.

12 (Witness sworn.)

13 THE CLERK: You may be seated, sir.

14 For the record, could you please state and spell your
15 first and last name, please.

16 THE WITNESS: It's Jeremy Dykes, J-e-r-e-m-y,
17 D-y-k-e-s.

18 THE CLERK: Thank you.

19 - - -

20 DIRECT EXAMINATION

21 - - -

22 BY MS. FARBER:

23 Q. Good afternoon, Mr. Dykes.

24 A. Good afternoon.

25 Q. Where do you currently live?

1 A. In Knoxville, Tennessee.

2 Q. And your current occupation is?

3 A. I'm an Assistant U.S. Attorney.

4 Q. Where did you work in June of 2012 to July of 2013?

5 A. I was with the Maryland Attorney General's Office during
6 that time.

7 Q. What was your job title?

8 A. I was an Assistant Attorney General.

9 Q. How long have you held that position -- strike that.

10 When did you begin in that position?

11 A. Approximately the spring of 2012, I think.

12 Q. Did you have any background in data analysis prior to
13 joining the Office of the Attorney General?

14 A. No.

15 Q. What were your responsibilities as an Assistant Attorney
16 General?

17 A. I was in the civil unit, and so my responsibilities
18 included handling civil matters, including *qui tams* and other
19 civil litigation on behalf of the State of Maryland.

20 Q. As part of your job, did you conduct criminal
21 investigations?

22 A. No.

23 Q. How did you become involved in the Pharmacare
24 investigation?

25 A. A *qui tam* was filed by a whistleblower against Pharmacare

1 on behalf of the state. And so in my capacity in the civil
2 unit, the case was assigned to me to handle.

3 Q. What was the name of the whistleblower?

4 A. Dennis Tokofsky.

5 Q. And when you say the case was assigned to you to handle,
6 what does that mean?

7 A. So when a *qui tam* is filed, it's filed by a whistleblower
8 but on behalf of the government. Once the government is served
9 with the *qui tam* complaint, then the government has a certain
10 amount of time to make a decision regarding whether or not it
11 will take over the case from the relator or it will decline to
12 intervene. So in order to make the decision whether or not to
13 intervene in the case, the government has to conduct an
14 investigation of the allegations raised by the whistleblower.

15 Q. Can't you just take the allegations at face value?

16 A. No, no. It's incumbent upon us to do our due diligence to
17 vet them and see -- see if they hold water.

18 Q. And at the time that you were assigned to the Pharmacare
19 case, how long had you been with the Office of the Attorney
20 General?

21 A. Well, I know that I started in the spring of 2012 with the
22 AG's Office, so probably less than a year.

23 Q. What was your area of responsibility on the Pharmacare
24 investigation, Mr. Dykes?

25 A. One of the things that I ended up handling was to assist

1 in gathering data from the state agencies who -- the state
2 agency that paid claims filed by Pharmacare to the State, as
3 well as helping to coordinate, collect data from the State of
4 Maryland's managed care organizations.

5 Q. Managed care organizations is MCOs?

6 A. MCOs, that's right.

7 Q. Would your area of responsibility have included getting
8 MADAP data?

9 A. Yes. That was one of the state agencies that we sought
10 data from.

11 Q. Who else was involved in collecting this data?

12 A. At some point, I know that I ended up working with one of
13 the other folks in the Maryland -- or in the Medicaid Fraud
14 Control Unit, Craig Andresini. He was one of our IT folks. I
15 think that I also worked with Carol Kelly who was a data
16 analyst employed by the unit.

17 Q. Did Mike DiPietro work on this task in some way?

18 A. He did, yeah. We were kind of working jointly, given that
19 Mike worked for the federal government and I worked for the
20 state. So there were claims paid by Medicare, which is
21 administered primarily federally, and then, you know, I was
22 helping manage the state side of things.

23 Q. And Mr., now Judge DiPietro, he was managing the federal
24 side?

25 A. Right, that's correct.

1 Q. What was Robert Mosley's role in this project, if any?

2 A. So Robert's a special agent. He's an investigator. He
3 works for Health and Human Services. And my understanding was
4 that he was involved in helping, through the federal
5 contracting process, to obtain the data analyst or the
6 contractor known as the MEDIC. So he acted sort of as a
7 liaison with the MEDIC, passing on information and data that
8 the other members of the investigative team collected.

9 Q. Just to put a finer point on it, the information that
10 Mosley was passing on to MEDIC, where was that information
11 coming from? Who was giving it to him?

12 A. It would have been on the -- on the state's side, it would
13 have been through me or Cathy Pascale who was handling the
14 criminal side of the investigation from my office.

15 Q. And on the federal side, where would that information have
16 been coming from?

17 A. So Mosley may have gone directly to one of the other
18 federal contractors to obtain claims data and acted as a
19 conduit to pass that on to MEDIC.

20 Q. And would Judge DiPietro have given Mosley claims data, if
21 you're aware?

22 A. I'm not sure. I don't know.

23 Q. Would you describe -- how would you describe Robert Mosley
24 as a law enforcement agent?

25 A. He was -- he was diligent. He was a hard worker. He

1 was -- I mean, he was great to work with. You know, you could
2 always, you know, trust him to be candid and -- and honest.

3 Q. Now, thinking about Agent Mosley's role in this data
4 project, was it Agent Mosley who was deciding the scope of
5 MEDIC's work?

6 A. No.

7 Q. Was Agent Mosley deciding what data to send to MEDIC?

8 A. No.

9 Q. Would it be Mosley's decision what to inform MEDIC about
10 the data he was sending them?

11 A. No.

12 Q. Would Agent Mosley be the person checking the data for
13 integrity?

14 A. No. I -- I don't know that he would know how to do that.

15 Q. Who would you expect to be checking the data for
16 integrity?

17 A. The data analyst who was hired to analyze it and the state
18 and federal agencies who passed the data on to us to begin
19 with.

20 Q. When you say "the expert," are you talking about MEDIC?

21 A. Correct.

22 Q. Would you expect Agent Mosley to be deduplicating data?

23 A. No.

24 Q. Would you expect -- strike that.

25 I'd like to direct your attention to May of 2013 when you

1 first received some MEDIC data; does that sound about right?

2 A. Yes.

3 Q. Okay. And did -- did Cathy Pascale provide any initial
4 instructions to the team after the data came in?

5 A. I don't remember offhand.

6 Q. I'm showing you what has been marked as Plaintiff's
7 Exhibit 43, this is already in evidence. It's Bates-stamped
8 OAG26893 at the bottom.

9 MR. GREENBERG: I'm going to just object that, I mean,
10 that -- he's talking about the data coming in. I mean, there
11 was data coming in well before this.

12 THE COURT: Is this exhibit already in evidence?

13 MS. FARBER: Yes, Your Honor.

14 THE COURT: And you want to ask about the exhibit?

15 MS. FARBER: Yes, Your Honor. He indicated he didn't
16 remember.

17 THE COURT: Overruled.

18 BY MS. FARBER:

19 Q. Mr. Dykes, I'm showing you an email that's dated May 17th,
20 2013, and it's been entered into evidence as Plaintiff's
21 Exhibit 43.

22 Do you see this email is from Catherine Pascale?

23 A. I see that, yep.

24 Q. And that's Cathy Pascale?

25 A. Correct.

1 Q. And you are in the line of recipients of this email?

2 A. I am.

3 Q. Now, directing your attention to what Ms. Pascale says,
4 can you read the first sentences of the email?

5 A. Sure.

6 "I am attaching the in-and-out analysis that Robert
7 received yesterday. I will be sending the analysis for each
8 pharmacy individually. Please write down your questions so
9 that we can organize them before we talk to the experts who put
10 the analysis together."

11 Q. Looking at the attachment names, do you see where it says
12 "MEDIC 1495"?

13 A. I do.

14 Q. So does this refresh your recollection about whether
15 Cathy Pascale provided any initial instructions after receiving
16 MEDIC 1495?

17 A. Yes.

18 Q. And what do you recollect?

19 A. I recollect that she wanted us to take a look at the
20 analyses and to essentially put together a list of questions
21 that we had so that we could be prepared to talk to them about
22 our questions.

23 Q. Did you understand that there would be future steps after
24 receiving this analysis?

25 A. Absolutely.

1 Q. Now, I'm directing your attention to what has already been
2 entered into evidence as Plaintiff's Exhibit 42.

3 A. Okay.

4 Q. Now, I'm directing your attention to the email that you
5 sent, which is the second email in this chain, dated Friday,
6 May 17th, 2013.

7 Do you see that?

8 A. I do.

9 Q. Do you see the subject is "In-and-out analysis"?

10 A. Yes.

11 Q. Was this a -- what's happening in this email? What were
12 you doing here?

13 A. So I see that I've cc'd Carol Kelly on this, who I said
14 is -- she was a data analyst in my unit. I believe, if I
15 remember right, we -- Carol and I had been working together
16 that day just to, you know, do various types of data analyses
17 to, you know, turn the analysis that was provided by the MEDIC
18 around and see if there were other ways to look at it that we
19 thought might be useful in understanding what the data might be
20 probative of.

21 Q. What do you mean by "turning the data around and seeing if
22 there are other ways to look at it"?

23 A. So I think what we did here was to take some of the totals
24 provided by the MEDIC by location and then to aggregate them
25 into one total per drug -- by drug, I should say.

1 Q. And what you were doing here, was this part of a testing
2 process to review data?

3 A. Correct.

4 Q. Now, I'm going to direct your attention to Plaintiff's
5 Exhibit 42. And it is the pages that are -- have an ECF number
6 at the top, and it's Pages 2 of 25 and then 3 of 25, that's
7 what we're looking at.

8 A. Okay.

9 Q. So, Mr. Dykes, you also have this in a binder in front of
10 you, so on that ledge on your witness stand, the binder without
11 a label on the front.

12 A. Okay.

13 Q. You can turn to Tab 42, if you would like to page through
14 this independently of what I'm putting on the projector.

15 So we're looking at Plaintiff's Exhibit 42 with the ECF
16 stamp on top that says Pages 2 of 25 and Page 3 of 25. And so
17 I'm directing your attention to the bottom line here on Page 3
18 of 25 of Plaintiff's Exhibit 42.

19 A. I see.

20 Q. Do you see the line that says "Grand Total"?

21 A. Yes.

22 Q. First of all, are these units dollars or pills or
23 something else?

24 A. Looking at the headers of the columns, so column N at the
25 top it says "Total Count of Invoices," and then T says "Sum of

1 PDE, TRICARE, FEHBP and Medicaid Quantity."

2 I believe these to be pills, not dollars.

3 Q. Okay. So looking at Page 2 of 25 of Plaintiff's
4 Exhibit 42, the headers of columns N and T you believe refer to
5 number of pills?

6 A. Correct.

7 Q. And then that -- the column U that says "Difference," is
8 that -- what unit is that?

9 A. That would be pills also.

10 Q. Okay. Now, let's turn back to Page 3 of Plaintiff's
11 Exhibit 42.

12 A. Right.

13 Q. And look at that bottom line number again.

14 A. Okay.

15 Q. So in the column U that was titled "Difference," what I
16 see is the number 1,370,463.75.

17 Do you see that?

18 A. I do.

19 Q. Okay. What does that indicate?

20 A. Well, I mean, this is -- this was originally an Excel
21 spreadsheet, and it looks like that number is just a -- in
22 Excel, you can go in and tell it to total the columns
23 automatically. And that looks like what that is. It's just a
24 total of everything in column U.

25 Q. So does this show or suggest a surplus of pills when

1 everything is added together?

2 A. It appears that way at first glance, but that would not be
3 the -- what that actually shows. I mean, you can see the
4 deficits in -- which are marked in red in the various rows.
5 And in terms of determining whether or not the data supported
6 all of the allegations that we had up until that time, you
7 know, which is that they were billing for pills that were not
8 actually dispensed, this would not be probative of that one way
9 or the other. Because it's -- it's taking all of the different
10 pills and all of the different strengths of those pills and
11 piling them all up together.

12 Q. And what -- I'm sorry, Mr. Dykes, please continue.

13 A. No, I was just going to say one of the goals in doing this
14 data analysis is to make sure that we're doing an
15 apples-to-apples comparison. You know, we're trying to take
16 all of the numbers -- the invoices are represented -- that's --
17 what that represents is the drugs purchased by Pharmacare from
18 the wholesale distributors.

19 And then column T, that shows what they've billed all the
20 various payors for.

21 So in the columns where there's red, that's showing that
22 they've billed for more than they purchased. So they billed
23 for something they clearly didn't have or they appear not to
24 have had in their inventory.

25 But, like I was saying, it has to be done on a

1 pill-by-pill basis because that's how the purchases are made.
2 Instead of -- instead of doing an apples-to-apples comparison,
3 if you look at the grand total, that is, essentially, the
4 equivalent of a fruit salad analysis, which is not -- not a
5 useful way to crunch the numbers.

6 Q. And why is it that you have to look on a pill-by-pill and
7 dosage-by-dosage basis?

8 A. To make sure that you -- that you're comparing what they
9 bought with what they billed for.

10 Q. And does your analysis -- or your summary look at the --
11 does your grand total figure reflect a pill-by-pill and
12 dosage-by-dosage surplus or shortage?

13 A. Grand total meaning row 512?

14 Q. Right. That 19.3-million figure, does that account for
15 pill-by-pill, dosage-by-dosage, apples-to-apples comparison?

16 A. No, it does not.

17 Q. I guess, you know, the bigger question here is, you send
18 this around, why didn't everyone just put their pencils down
19 and stop the investigation at this point?

20 A. Well, the data analysis was an iterative process. We, at
21 this point, didn't have all of the claims data from the various
22 payors. And so we knew that the only -- the only thing that
23 could happen following this, after we got more claims data
24 added in, was that the total loss number was just going to
25 continue to go up.

1 Q. Now, after you circulated your summary here, did the
2 members of the team meet to discuss the in-and-out analysis?

3 A. We did.

4 Q. I'm now directing your attention to Defense Exhibit 42,
5 which is already in evidence. This is a May 20th, 2013, email
6 from Cathy Pascale.

7 Do you see that?

8 A. I do, yes.

9 Q. And you are in the list of recipients there?

10 A. Yes.

11 Q. Now, would you please read that first paragraph.

12 A. "Jeremy Dykes, Mike DiPietro, Robert Mosley, and I met
13 this morning to review the in-and-out analysis that we received
14 on Friday. As Mike said at our meeting, we still only have
15 half the story. Here's a list of questions from this morning's
16 meeting. Let Robert know if you have any additional questions.
17 He will synthesize these and send them to the experts in
18 advance of our phone conference, which is yet to be scheduled."

19 Q. So what's going on here? What was the meeting that you
20 all had, if you recall?

21 A. Well, yeah, I remember -- I remember meeting to talk about
22 the analysis and, you know, brainstorming what -- what
23 additional work needed to be done.

24 Q. Okay.

25 A. And you could see that Cathy has listed a handful of

1 things that we decided we wanted -- we either needed additional
2 information on or additional -- or topics we needed to give
3 additional thought to.

4 **MS. FARBER:** Court's indulgence.

5 (Counsel conferring.)

6 **BY MS. FARBER:**

7 **Q.** Mr. Dykes, while you were working on the Annappareddy
8 investigation, did anyone ever express any kind of personal
9 animus towards Mr. Annappareddy?

10 **A.** No.

11 **Q.** And while you were working on the Annappareddy
12 investigation, did anyone on the team ever express a desire to
13 make a big case out of this regardless of whether -- regardless
14 of what the data showed?

15 **A.** No, no. Absolutely not. No.

16 I recall that, at that point, there was significant
17 evidence of wrongdoing. And the data analysis was, you know,
18 an effort to quantify what the -- the extent of the wrongdoing
19 was.

20 **MS. FARBER:** No further questions at this time.

21 **THE COURT:** All right. Let's go ahead and break for
22 lunch at this time. Let's just say it's 20 minutes till 1:00.
23 Let's come back at five-minutes till 2:00. That'll give us an
24 hour and 15 minutes.

25 We certainly will finish with the cross of this witness

1 today, correct?

2 **MR. GREENBERG:** Yeah, absolutely, Your Honor.

3 **THE COURT:** All right. And then we'll use the time
4 after we finish with this witness to debate substantive
5 matters, evidentiary matters, use the rest of the day
6 productively before we adjourn. All right?

7 **MR. GREENBERG:** Understood, Your Honor. Thank you.

8 **THE COURT:** Before we break, the unidentified
9 witness --

10 You can step down.

11 **THE WITNESS:** Thank you.

12 **THE COURT:** The unidentified witness that the
13 Plaintiff proposed, let's call him the mystery witness, I think
14 I have the right to ask this: Is this a purported expert?

15 **MR. FLOWERS:** No, no, no. No, this is not a purported
16 expert at all. And, in fact, I'm hoping that I will know
17 something today. We're just trying to confirm that he can make
18 it. So I'm hoping --

19 **THE COURT:** He can make it next week?

20 **MR. FLOWERS:** We're hoping on Monday. So we'd have
21 our expert, Bill Fassett, this mystery witness --

22 **THE COURT:** So we need a full day Monday, probably,
23 then. We're flying back on Sunday. We'll be here all day
24 Monday.

25 **MR. FLOWERS:** Okay. Well, again, plans are in flux.

1 As soon as I know, I will let the Court know, and I will let
2 opposing counsel know.

3 **MR. PHELPS:** Can we have their identity? Or . . .

4 **THE COURT:** You still want to withhold the identity?

5 **MR. FLOWERS:** For now -- for now.

6 **THE COURT:** All right. We'll talk about it this
7 afternoon.

8 All right. We'll see you at five-minutes till 2:00.

9 **THE CLERK:** All rise. This Honorable Court is now in
10 recess.

11 (Whereupon, a recess was taken from 12:38 p.m. to
12 1:56 p.m.)

13 **THE CLERK:** All rise. This Honorable Court resumes in
14 session.

15 **THE COURT:** Please be seated.

16 Please bring the witness back to the stand.

17 (Witness enters.)

18 **THE COURT:** Was the Government finished with the
19 cross?

20 **MS. FARBER:** We were finished with our direct, Your
21 Honor, yes.

22 **THE COURT:** With your direct, I'm sorry. I should
23 have said direct. All right.

24 You're still under oath. Thank you.

25 - - -

CROSS-EXAMINATION

- - -

BY MR. GREENBERG:

Q. Good afternoon, Mr. Dykes.

A. Good afternoon.

Q. How have you been since your deposition nearly a year ago in this case?

A. I've been fine, thank you.

Q. You were asked on direct about Plaintiff's Exhibit 42.

Let's just take a look at that document, please.

A. Okay.

Q. Okay. And do you remember how you -- either in response to a question or in your own words, you said that this Excel spreadsheet attached to your email of May 17th, 2013, in Plaintiff's Exhibit 42 aggregated data?

A. Yes. It was the -- it consolidated the invoice review tab of each of the MEDIC 1495 Pharmacare invoice review files.

Q. So that is another way of saying that it counted all of Pharmacare's inventory for all nine stores?

A. No. That -- there's no way to know if this was counting all of Pharmacare's inventory.

Q. Well, it counted all of the inventory for each store that MEDIC 1495 counted, right?

A. It counted the --

Q. Let me rephrase the question, sir.

1 Mr. Dykes, you agree that your spreadsheet attached to
2 your email of May 17th, 2013, in Plaintiff's Exhibit 42,
3 counted all of the purchased inventory in the nine separate
4 invoice reviews that MEDIC 1495 did, correct?

5 A. I would say that it counted all of the information that
6 was provided by the wholesalers at that time.

7 Q. Sir, you testified, I believe, that you prepared this
8 analysis the same day that MEDIC 1495 was received, right?

9 A. I don't know that I said that, but I think it's right.

10 Q. All right. Well, let me turn you to -- let's look at
11 Plaintiff's Exhibit 43, it's the next one in the binder. Do
12 you see here, it's an email from Cathy Pascale to a bunch of
13 folks, including you, May 17th, 2013, 11:45 a.m.?

14 A. Yes.

15 Q. And you see how it's attaching nine separate files for
16 MEDIC 1495?

17 A. Yeah.

18 Q. And then the very last sentence says, "Robert, thank you
19 for all of your hard work getting these numbers together."

20 A. Yes.

21 Q. Okay. Does this refresh your memory that you -- the Excel
22 file that you prepared later the same day was analyzing the --
23 aggregating the purchase data in MEDIC 1495 for all nine
24 stores?

25 A. It was aggregating the MEDIC analysis, yes.

1 Q. And, specifically, it was counting the purchased inventory
2 for all nine stores together, right? That MEDIC 1495 count for
3 each store.

4 A. The same information that was in the MEDIC 1495, yes.

5 Q. So to just kind of break it down and put it in sort of
6 simple layperson's terms, you took the purchase inventory that
7 MEDIC 1495 counted from wholesalers, for each of the nine
8 stores it analyzed, and you combined all of that data on the
9 inventory side, right?

10 A. So --

11 Q. It's a "yes" or "no" question.

12 MS. FARBER: Objection, Your Honor, as to whether it's
13 a "yes" or "no" question. The witness should be allowed to
14 answer as he wants to.

15 THE WITNESS: I think you're misstating the facts.

16 THE COURT: All right. Could you rephrase.

17 BY MR. GREENBERG:

18 Q. All right. Let me try to rephrase the question then,
19 because I certainly don't want to misstate the facts.

20 You agree, AUSA Dykes -- I'm sorry, I was calling you
21 Mister -- you are an AUSA, by the way, right?

22 A. Mr. Dykes is fine.

23 Q. Okay. All right, then.

24 Mr. Dykes, we've established now that in Plaintiff's
25 Exhibit 42 you emailed, less than six hours after -- we've

1 established that in the morning on May 17th, 2013, you received
2 the nine separate invoice reviews for MEDIC 1495, right?

3 A. Right.

4 Q. And then that's Plaintiff's Exhibit 43, right?

5 A. Right.

6 Q. And then if you turn back to Plaintiff's Exhibit 42, you
7 see how your email was sent at 5:09 p.m. the same day?

8 A. Yes.

9 Q. And you sent it to Robert Mosley, among others?

10 A. Correct.

11 Q. And the subject is "In-and-out Analysis"?

12 A. Right.

13 Q. And you wrote, "Attached is a summary of the data provided
14 by the CMS contractor for all the various Pharmacare stores,
15 which shows the total drugs purchased versus the total drugs
16 sold." Right?

17 A. Right.

18 Q. And by "the CMS contractor," you meant MEDIC, right?

19 A. Correct.

20 Q. And specifically MEDIC 1495, right?

21 A. MEDIC 1495, I believe, is what they were calling the
22 analysis.

23 Q. And in the next paragraph you wrote, "I created the
24 spreadsheet by consolidating the invoice review tab of each of
25 the nine Pharmacare locations respective 'MEDIC 1495 Pharmacare

1 at xxxxx invoice review files.' I then sorted by drug name and
2 subtotaled both the total count of invoices in's and the sum of
3 PDE, TRICARE, FEHBP, and Medicaid quantity out's." Right?

4 A. Right.

5 Q. And so that's kind of a sort of fancy way of saying you
6 counted all of the purchase inventory for each of the nine
7 stores together, and you compared it to the claims for each of
8 the nine stores together, right?

9 A. Right.

10 Q. Okay. We can move on from that one.

11 By the way, Mr. Dykes, I believe I heard you testify --
12 and please correct me if I'm wrong, if I misstate anything,
13 okay?

14 A. Sure.

15 Q. I certainly don't want to misstate anything, and I
16 appreciate you clarifying that earlier.

17 I believe I heard you say that you had been in the MFCU or
18 in the Maryland of Office of Attorney General for about a year
19 when this *qui tam* complaint was filed by Dennis Tokofsky; is
20 that right?

21 A. That's correct, yes.

22 Q. Okay. You testified that you believed, I think as of
23 May 17, 2013, or some other time in May 2013, that the, quote
24 "loss number was just going to continue to grow," right?

25 A. Right.

1 Q. And in having that belief, you were assuming that the
2 payors that hadn't yet been included paid for the same drugs
3 that were included in MEDIC 1495, right?

4 A. It seemed likely.

5 Q. But if those payors did not pay for any of the same drugs
6 in MEDIC 1495, they would make no difference, right?

7 A. Well, it's an awfully long list of drugs.

8 Q. All right. Well, let's just talk about the HIV drugs, for
9 example.

10 You knew, as of 2013, that MCOs did not pay for HIV drugs,
11 right?

12 A. I don't remember if we knew that or not.

13 Q. Okay. You have two binders in front of you. The one with
14 the cover on it is from the Government, the Government's
15 exhibits. Please turn to Government's Exhibit 23, sir.

16 Let me know when you're there.

17 Yes, it's Government's Exhibit 23, and, Mr. Dykes, it was
18 also Exhibit 11 to your deposition.

19 A. Okay.

20 Q. All right. You see how at the top of the page there's an
21 email from Laurie Gutberlet, March 7th, 2013, to Michael
22 DiPietro?

23 A. Yes.

24 Q. And it copies you, among other people?

25 A. Yes.

1 Q. And one of the other people is Robert Mosley?

2 A. Yes.

3 Q. And Laurie Gutberlet writes -- I'm just going to
4 paraphrase to kind of cut to the chase, "The various HIV
5 medications are not covered by Medicaid MCOs."

6 Do you see that?

7 A. Yes.

8 Q. Does that refresh your recollection?

9 A. I recall this email, yes.

10 Q. And you agree now that the various HIV medications are not
11 covered by MCOs, right?

12 A. I can't, as I sit here right now, remember if Laurie's
13 belief was right or not.

14 Q. Okay. But you have no reason to believe, sitting here
15 today, that this email you got in early March 2013 had
16 inaccurate information, right?

17 A. I don't have information one way or the other, and I don't
18 remember. I'm sorry.

19 Q. All right. Do you see in the email earlier in the chain,
20 it's from Michael DiPietro to Laurie Gutberlet, March 7th,
21 2013?

22 A. Yes.

23 Q. And by the way, does this refresh your recollection about
24 that you -- rather than first getting data in May 2013, the
25 investigation team first started getting data at least by early

1 March 2013?

2 A. That sounds right.

3 Q. And you see how on the second paragraph Mr. DiPietro
4 refers, to, quote, "Robert's expert," end quote?

5 A. Right.

6 Q. I think we can move on from Government's Exhibit 23 or
7 Defendant's Exhibit 23, same difference.

8 Mr. Dykes, Robert Mosley told you and the prosecutors,
9 meaning Sandra Wilkinson and Cathy Pascale, during the spring
10 and summer of 2013 that MEDIC compared claims data files to
11 make sure there was no double-counting or duplication of drugs,
12 right?

13 A. I think so, but I'm not 100 percent positive that he made
14 a statement like that.

15 Q. Let's move on to a slightly different topic.

16 You testified that Robert Mosley -- if I heard you
17 correctly, and some of these words may have been asked in the
18 question. But you testified something to the effect of Robert
19 Mosley didn't know how to check the data for integrity and
20 didn't do so, right?

21 MS. FARBER: Objection to the characterization.

22 THE COURT: Do you want to rephrase the question, or
23 do you want to persist with the question?

24 MR. GREENBERG: I think the question is fine.

25 THE COURT: All right.

1 Go ahead and try to answer, if you can.

2 Overruled.

3 THE WITNESS: I think what I said was that I wasn't --
4 I'm not sure if he would have known how to have done that.

5 BY MR. GREENBERG:

6 Q. But, in fact, Robert Mosley told you and the rest of the
7 investigation team that he and one other person did check for
8 and removed duplicates in the data, right?

9 A. Again, I don't know if he would have known how to have
10 done that.

11 Q. Okay.

12 A. And we were using data analysts.

13 Q. And you don't recall Robert Mosley ever representing to
14 you and other members of the investigation team that he and at
15 least one other person -- or he and one other person were doing
16 that task or checking for and removing duplicates in the claims
17 data?

18 A. As I sit here, no, I don't remember.

19 Q. Let's see if we can refresh your recollection. All right.
20 Let's go back to the other binder, please, sir. And let's turn
21 to Plaintiff's Exhibit 80.

22 MR. GREENBERG: And this one, Your Honor, I believe is
23 marked for identification but is not yet in evidence.

24 MS. FARBER: Objection, Your Honor --

25 MR. GREENBERG: I'm sorry. Let me rephrase that. It

1 is -- there's a stipulation to authenticity, but it's not yet
2 admitted into evidence.

3 MS. FARBER: This is post-indictment material.

4 MR. GREENBERG: I'm refreshing his recollection and
5 impeaching.

6 MS. FARBER: And as far as whether --

7 MR. GREENBERG: No speaking objections.

8 THE COURT: Let's excuse the witness.

9 Please step outside for just a moment, if you would,
10 please.

11 THE WITNESS: Okay.

12 (Witness exits.)

13 THE COURT: I need to see the exhibit.

14 MR. GREENBERG: Do you just want me to come up and
15 show you a copy --

16 MR. FLOWERS: It's on the screen.

17 MS. FARBER: Your Honor, this references a data
18 analysis that occurred after MEDIC 1495. We think it's a
19 mischaracterization to say that Robert Mosley was deduplicating
20 this dataset also. But what we're talking about here is a
21 different dataset, a different task, post search warrant, post
22 indictment, not even MEDIC 1495.

23 THE COURT: What about that?

24 MR. GREENBERG: Well, Your Honor, this witness
25 testified ambiguously on direct that Robert Mosley was not

1 capable of checking for removing duplicates, and here he is
2 saying, "Mike and I will conduct preliminary review and
3 double-check for duplications (Medicare/Medicaid beneficiaries;
4 MCO/Medicaid Fee-for-Service and ADAP) before sending to MEDIC
5 for invoice review."

6 This directly impeaches --

7 **THE COURT:** All right. I'm going to overrule the
8 objection and allow it for that limited purpose only of
9 impeachment for whether Mr. Mosley had authority or the ability
10 to check for duplicates. And that's all. Because it is post
11 indictment.

12 **MR. GREENBERG:** Thank you, Your Honor.

13 **THE COURT:** Please ask the witness to return.

14 (Witness enters.)

15 **BY MR. GREENBERG:**

16 **Q.** Mr. Dykes, just let me know when you're ready, okay?

17 **A.** Okay.

18 **Q.** I believe you testified, sir, Robert Mosley, the DHIS
19 agent who recommended MEDIC, was incapable of himself of
20 checking for and removing duplicates, right?

21 **A.** I think what I said is that I wasn't sure if he knew how
22 to do that or not.

23 **Q.** Okay. So you don't remember?

24 **A.** Right.

25 **Q.** All right. Let's turn to Plaintiff's Exhibit 80, please.

1 Oh, it's already on the screen.

2 Sir, this is an email from Robert Mosley in early
3 February 2014, right?

4 A. Yes.

5 Q. And you were one of the folks copied; it says
6 dykesjeremy@gmail.com?

7 A. Right.

8 Q. And it was sent to the prosecutors as well, Wilkinson and
9 Pascale?

10 A. Okay.

11 Q. And DiPietro, who is a civil AUSA?

12 A. Yes.

13 Q. And some others, and several agents including Maura
14 Lating, Pam Arnold and James Ryan?

15 A. Yes.

16 Q. And it has in all capital letters "PHARMACARE-UPDATE"?

17 A. Yes.

18 Q. And if you look at the second sentence, it says, quote,
19 "Mike and I will conduct preliminary review and double-check
20 for duplications (Medicare/Medicaid beneficiaries; MCO/Medicaid
21 Fee-for-Service and ADAP) before spending to MEDIC for invoice
22 review."

23 And then it goes on, right?

24 A. Okay.

25 Q. Does this refresh your recollection that, in fact, Robert

1 Mosley was capable of checking for and removing duplicates from
2 the claims data?

3 A. I don't mean to mince words, but I note it doesn't say
4 anything about removing duplicates.

5 Q. Okay.

6 A. It also indicates that he's sharing the task with Mike,
7 which I mean -- I think means Mike DiPietro.

8 Q. All right. So at a minimum, you agree, this refreshes
9 your recollection that Robert Mosley was capable, in tandem
10 working with Michael DiPietro, of identifying duplicates in the
11 claims data?

12 A. I mean, the email says what it says.

13 Q. So you agree that -- that it -- he could double-check for
14 duplications?

15 MS. FARBER: Objection, characterization.

16 THE COURT: Overruled.

17 THE WITNESS: Can you repeat the question?

18 BY MR. GREENBERG:

19 Q. I'm simply asking you, does this refresh your recollection
20 that, in fact, Robert Mosley was capable, working with Michael
21 DiPietro, of double-checking for duplications in the claims
22 data?

23 A. He said that he would do a preliminary review and
24 double-check for duplications, yes. That's what the email
25 says.

1 Q. Thank you. Okay.

2 All right. Let's move to a different topic now. I don't
3 think I have a whole lot more.

4 Now, you were -- your role in the investigation, as I
5 understood it from your direct examination and your deposition,
6 is you were sort of on the data side, right?

7 A. Right.

8 Q. You weren't out there interviewing folks?

9 A. That was not my --

10 Q. There might have been some rare exceptions, but in
11 general, like, you didn't interview, for example, Lisa Ridolfi?

12 A. I don't believe so.

13 Q. And so you probably didn't read all of the memos that
14 Laurie Gutberlet wrote on her interviews of Lisa Ridolfi?

15 A. I don't remember if I read all of her memos or not.

16 Q. Okay. And Robert Mosley never told you that Pharmacare
17 frequently transferred inventory among its stores, right?

18 A. I don't recall whether he told me that or not.

19 Q. Maura Lating didn't tell you either that information, did
20 she?

21 A. I don't recall.

22 Q. Okay. And you didn't know that -- when you were working
23 on MEDIC 1495, that, in fact, the nine Pharmacare stores
24 frequently transferred inventory between and among themselves,
25 right?

1 A. I don't recall.

2 Q. Okay. We'll move on from that topic. Let me just see if
3 I have anything else here.

4 MR. GREENBERG: Nothing further for Mr. Dykes, Your
5 Honor.

6 THE COURT: Anything further from the defense?

7 MS. FARBER: Yes, Your Honor.
8 Court's brief indulgence.

9 - - -

10 REDIRECT EXAMINATION

11 - - -

12 BY MS. FARBER:

13 Q. Mr. Dykes, would you expect MCOs to pay for some of the
14 drugs in MEDIC 1495?

15 MR. GREENBERG: Objection, this calls for his current
16 expectation, not what he would have expected back in 2013.

17 MS. FARBER: I can rephrase the question and make it
18 more specific.

19 THE COURT: All right. Rephrase.

20 BY MS. FARBER:

21 Q. Mr. Dykes, in 2013, would you have expected MCOs to pay
22 for at least some of the drugs, some of the 72 drugs included
23 in the MEDIC 1495 analysis?

24 MR. GREENBERG: Objection, Your Honor. The witness, I
25 believe, previously testified he doesn't recall whether the

1 MCOs paid for which drugs.

2 **MS. FARBER:** I don't think that was the testimony,
3 Your Honor.

4 **THE COURT:** All right. I'll allow it. The witness
5 can answer it any way he deems appropriate.

6 Overruled.

7 **THE WITNESS:** Would I have expected the MCOs to have
8 paid for some of the drugs in the 1495 analysis?

9 **BY MS. FARBER:**

10 **Q.** Yes.

11 **A.** Yes, I would have expected that.

12 **Q.** Now, Plaintiff's counsel showed you Plaintiff's
13 Exhibit 80, which is a single email sent on February 5th, 2013.
14 Do you see that?

15 **A.** I do.

16 **Q.** It's a single-page document, one email, right?

17 **A.** Right.

18 **Q.** Did Plaintiff's counsel mention to you that there were a
19 bunch of replies to that email?

20 **A.** No.

21 **MS. FARBER:** Your Honor, I'm showing what's been
22 marked as Defendant's Exhibit 61. This is a document that's
23 Bates-stamped OAG33338. And it goes to -- it goes to some
24 unBates-stamped numbers. It's four pages long. Defense
25 Exhibit 61.

1 **THE WITNESS:** I think I'm in the wrong binder.

2 **BY MS. FARBER:**

3 **Q.** You want to find the binder that has a cover page on it.

4 **A.** Okay.

5 **Q.** Now I'm going to direct your attention to the bottom of
6 Defense Exhibit 61. Oh, and I think I got the date wrong here.

7 So let me show you, again, Plaintiff's Exhibit 80. I said
8 February 5th, but that, I think, is actually a 6. And
9 Plaintiff's Exhibit 80 starts, "All: Update. I
10 received . . ."

11 Do you see that?

12 **A.** Yes.

13 **Q.** Now I'm showing you Defense Exhibit 61, which is an email
14 from Robert Mosley dated February 6th, 2014, and it starts,
15 "All: Update. I received . . ."

16 Do you see that?

17 **A.** Yes.

18 **Q.** That's the same email that Plaintiff's counsel just showed
19 you as Plaintiff's Exhibit 80, right?

20 **A.** Correct.

21 **Q.** And he didn't show you any other emails in response to
22 that single one, did he?

23 **A.** Correct.

24 **Q.** Okay. But there are other emails in response to that,
25 right?

1 A. Yes.

2 Q. Okay. And do you see an email from Sandra Wilkinson about
3 a week later on February 14th, 2014?

4 A. I do. Where it says, "I know this is still a work in
5 progress"

6 Q. Right.

7 Would you read the rest of that email.

8 A. " . . . but may I see, or what is the current status of
9 the MEDIC analysis?"

10 Q. Plaintiff's counsel didn't show you that in his
11 examination, did he?

12 A. Correct.

13 Q. Okay. Now let's look at this top email. This is from
14 Michael DiPietro, eight hours later -- and the man works late
15 hours, doesn't he? -- February 14th, 2014.

16 Do you see that?

17 A. I do.

18 Q. And who is it that sent this email on February 14th, 2014?

19 A. At 8:21 at night, it was Mike DiPietro.

20 Q. Was it Robert Mosley who sent the email?

21 A. No.

22 Q. And Mike DiPietro, what is he doing in this email?

23 A. So he's forwarding his review of the MEDIC's analysis with
24 the duplicates taken out.

25 Q. He says "my review."

1 Do you see that?

2 A. His -- yeah, "my review" is what he says.

3 Q. "My" -- singular -- "review"?

4 A. Correct.

5 Q. And then he attaches a spreadsheet. Do you see where it
6 says "Attachments" on Defendant's Exhibit 61?

7 A. I do, yep.

8 It says, "MGH review of 2nd in-and-out analysis add back
9 JHU duplicates."

10 Q. Who is MGH?

11 A. I don't remember.

12 Q. Does Mary G. Hammond ring a bell?

13 A. It does.

14 Q. Is MGH Mary G. Hammond?

15 MR. GREENBERG: Objection to the leading.

16 THE WITNESS: Yes, I believe so.

17 THE COURT: All right. Overruled.

18 Go ahead.

19 THE WITNESS: Yes, I believe so --

20 BY MS. FARBER:

21 Q. Is MGH Mary G. Hammond?

22 A. Yes.

23 Q. Who is Mary G. Hammond?

24 A. She was a -- if I remember right, she was a data analyst
25 with the U.S. Attorney's Office.

1 Q. And do you see Robert Mosley's initials anywhere on that
2 attachment that takes out duplicates?

3 A. No.

4 Q. Anywhere at all?

5 A. No.

6 Q. Now, now that you've read the full email chain that
7 Plaintiff's counsel did not show you, does this appear
8 consistent with your statement that Robert Mosley wouldn't be
9 the one deduplicating data?

10 A. Yes.

11 MS. FARBER: No further questions.

12 - - -

13 **RECROSS-EXAMINATION**

14 - - -

15 **BY MR. GREENBERG:**

16 Q. All right. Just a few follow-ups on this.

17 You don't know whether or not Special Agent Mosley
18 contributed to this particular Excel file, the attachment you
19 were just shown, right?

20 A. There's no indication that he did, but --

21 Q. But he's copied on the email from Mr. DiPietro, right?

22 A. He's copied, as am I, and Cathy Pascale and Maura Lating
23 and Pam Arnold and James Ryan.

24 Q. And Sandra Wilkinson, right?

25 A. Correct.

1 Q. And let's look at that attachment. If you look at the
2 second page of the Excel file, do you see under "Approximate
3 Dollar Loss No. 1," do you see that in the middle of the -- oh,
4 I apologize. This -- I think it's the same exhibit.
5 Government's Exhibit 61?

6 A. There's some spreadsheets in the pages after this.

7 Q. Okay. And this is the work that was -- that ensued after
8 the Mosley email that we talked about earlier, right?

9 A. This appears to be the MGH review of second in-and-out
10 analysis.

11 Q. Right.

12 A. Is that what you're talking about?

13 Q. Right. This is the analysis that followed the Mosley
14 email that we -- you were asked about just now and that I asked
15 you about.

16 A. Yes. This is the spreadsheet that Mike -- Mr. DiPietro
17 forwarded.

18 Q. Right.

19 And you see how in the last page of the spreadsheet,
20 there's only two pages, you see how there's a column in white,
21 the first column says "Approximate Dollar Loss No. 1"?

22 A. Okay.

23 Q. And then it says "Global, All Stores"?

24 A. Yes.

25 Q. And you see it says, "Now there's a surplus of

1 6.8 million," roughly?

2 **MS. FARBER:** Your Honor, we object, and I'd like to
3 make a slightly longer objection without the witness on the
4 stand.

5 **THE COURT:** All right.
6 Please step outside for a moment.

7 **THE WITNESS:** Yes, Your Honor.
8 (Witness exits.)

9 **THE COURT:** All right.

10 **MS. FARBER:** Thank you, Your Honor.

11 The Court's ruling was that this information, that email
12 that's Plaintiff's Exhibit 80, would only be admissible for
13 impeachment about Robert --

14 **THE COURT:** That is what I said.

15 **MS. FARBER:** -- Mosley's role deduplicating --

16 **THE COURT:** Yes, that's exactly what I said.

17 **MS. FARBER:** Yes. And now we are going into the
18 substance of what this analysis showed. That's beyond
19 impeachment and now it's post indictment.

20 **THE COURT:** I think I agree with you.

21 Mr. Greenberg, what about that?

22 **MR. GREENBERG:** So Government counsel opened the door
23 by asking a series of questions about the DiPietro email
24 February 14th, 2014, that attaches the Excel file.

25 **MS. FARBER:** Respectfully, Your Honor, I did not show

1 the Excel file or ask any substantive questions.

2 **MR. GREENBERG:** She --

3 **MS. FARBER:** -- my questioning --

4 Excuse me, sir.

5 My questioning was limited entirely to the framework of
6 the impeachment, which was did or would Robert Mosley conduct a
7 deduplication. I didn't even display this spreadsheet.

8 **MR. GREENBERG:** That is misleading. Counsel expressly
9 referred to Mary Hammond working on that Excel file, as
10 attached. She expressly referred to the attachment and pointed
11 out it has the initials MGH. She has opened the door to
12 questions about that attachment.

13 Judge Anderson, sorry one other point, just real quick --

14 **MR. MILLER:** Can you please hold one second.

15 **MR. GREENBERG:** Sorry.

16 **THE COURT:** Go ahead, Mr. Greenberg.

17 **MR. GREENBERG:** I apologize, Your Honor. I just
18 wanted to make one other point.

19 Counsel essentially accused me of misleading the witness
20 by not showing this email chain with the attached Excel file.
21 I need to respond.

22 **MS. FARBER:** Your Honor, again, the scope of the
23 questioning was entirely about Plaintiff counsel's purported
24 impeachment of this witness as to Robert Mosley's ability to
25 deduplicate data. This data is not MEDIC 1495. It didn't go

1 into the search warrant or the indictment. We're now in a
2 completely different field.

3 So my questioning was limited to information related to
4 Robert Mosley's role and Robert Mosley's abilities.

5 Plaintiff counsel now wants to go --

6 **THE COURT:** We have a transcript right here. We have
7 a transcript. Let's just go back and look at it. That's one
8 of the good features of having a daily transcript.

9 My law clerk and I both looked at the relevant transcript,
10 and we do not believe the Government opened the door with their
11 redirect, so objection is sustained.

12 All right. Anything further with the witness,
13 Mr. Greenberg? Do you want to bring him back?

14 **MR. GREENBERG:** Yes, Your Honor. Just briefly.

15 **THE COURT:** Please bring the witness back up, if you
16 would.

17 (Witness enters.)

18 **BY MR. GREENBERG:**

19 **Q.** Mr. Dykes, with respect to the testimony elicited on
20 redirect regarding whether or not Robert Mosley -- relating to
21 the issue of whether or not Robert Mosley was capable of
22 removing duplicates, you agree that at least as early as
23 May 1st, 2013, you asked Robert Mosley for guidance on matters
24 related to MEDIC 1495, didn't you?

25 **A.** I don't recall.

1 Q. Okay. Please turn to Plaintiff's Exhibit 31. I'm just
2 going to focus on -- I'm sorry, I apologize, I meant
3 Government's Exhibit 31.

4 Just let me know when you're there, sir.

5 A. Okay. I'm here.

6 Q. Okay. So in the middle of this first page, Government's
7 Exhibit 31, the last sentence of the full first paragraph, it's
8 an email from -- first of all, this is an email from Robert
9 Mosley only to you, right? May 1st, 2013, 1:32 p.m.?

10 A. Okay. Sorry, what did you say? May 1st --

11 Q. May 1st, 2013, 1:32 p.m.

12 You see that?

13 A. Okay. Yeah.

14 Q. Mr. Dykes, we just have a time limit, and I'm trying to
15 get through things.

16 So it's an email from Robert Mosley to you, May 1st, 2013,
17 1:32 p.m.

18 Do you see that?

19 A. Yes.

20 Q. And the second -- the third to the last sentence,
21 technically in the first paragraph, says, "She will not make
22 ANY" -- "any" is in all caps -- "changes or manipulate in any
23 way." Right?

24 A. Yes.

25 Q. And that's Robert Mosley forwarding to you only an email

1 from MEDIC, right?

2 A. Yes.

3 Q. And then you respond to Robert Mosley and you copy some
4 other folks, right?

5 A. Correct.

6 Q. Also on May 1st, 2013?

7 A. Yes.

8 Q. And the last sentence of that email, you asked Robert
9 Mosley, "Would it be better to give them totals of some sort?"
10 Right?

11 A. Yes.

12 MR. GREENBERG: Nothing further for this witness.

13 THE COURT: All right. Thank you, sir. You may step
14 down. You're excused.

15 (Witness exits.)

16 THE COURT: Was Exhibit 61 offered into evidence,
17 formally?

18 MS. FARBER: No, Your Honor, but we would like to
19 offer it into evidence.

20 THE COURT: Any objection?

21 MR. GREENBERG: Well, I mean, we can't have this sort
22 of piecemeal where they -- well, let's wait for the witness --
23 he's done, so it doesn't matter, I suppose.

24 I mean, they can't move into evidence their own exhibit,
25 just part of it, after saying we can't ask questions about the

1 Excel file and accusing me of misleading --

2 **THE COURT:** Well, I'm not going to consider it. I
3 mean, it probably needs to be part of the record for appeal
4 purposes, but let's just submit it as for identification only.

5 **MR. GREENBERG:** For identification only, yes.

6 **THE COURT:** The attachment is identification only.
7 The email comes in. The attachments to the email is for
8 identification only. I will not consider it.

9 **MR. GREENBERG:** If I may have just a moment to look at
10 the actual email, because I believe the whole purpose --

11 **MS. FARBER:** I'll note, Your Honor, there are a number
12 of exhibits that have come in for certain purposes and not
13 others. This is certainly a thing that the Court can do, is to
14 say -- to delineate which part of the exhibit is substantive
15 and which is not.

16 **MR. GREENBERG:** Well, Your Honor, I think the simplest
17 approach and cleanest approach for the record would be to just
18 admit the entire document including the attachment.

19 **MR. MILLER:** No objection?

20 **MR. GREENBERG:** Well, we do not to the piecemeal
21 approach. We would not object, in fact, we would move to admit
22 the entire --

23 **THE COURT:** All right. Does the Government object to
24 that?

25 **MS. FARBER:** No, Your Honor, subject to the same

1 understanding this was on the transcript, but the spreadsheet
2 is not.

3 **THE COURT:** Then 61 is admitted without objection in
4 its entire.

5 **MS. FARBER:** Yes.

6 **THE COURT:** All right. Any additional witnesses
7 today?

8 **MS. FARBER:** None from the Government.

9 **MR. GREENBERG:** Not from Mr. Annappareddy, Your Honor.

10 **THE COURT:** All right. So we've got the rest of the
11 day to debate some legal issues that we need to work through.

12 I've held under advisement these two FBI 302 forms, report
13 of interview forms, Exhibits 59 and 71.

14 Let's take a short recess. The matter has been fully
15 briefed by both sides. My law clerk and I have researched the
16 law, and I think we need to hear some argument and then rule on
17 these and move forward from there.

18 So you were going to cite a case about opening the door,
19 Mr. Greenberg, for the Fourth Circuit.

20 **MR. GREENBERG:** Yes, sir. I emailed that to
21 Mr. Miller and opposing counsel.

22 **THE COURT:** Well, just tell me in summary fashion what
23 it -- seems like that's a very discretionary thing with the
24 trial court. I don't know that it would be a case right on
25 point or an appeal that would tie my hands as to what is

opening the door or not. But I'll be glad to listen to you.

MR. GREENBERG: Well, with respect to -- I mean, we believe this matter is established by -- is controlled by Fourth Circuit precedent, specifically *FDIC versus Bakkebo*, B-A-K-K-E-B-O, 506 F.3d 286, Fourth Circuit 2007, a published opinion. And this establishes the principle and, you know, elaborates that material produced in discovery on a subject as with materials considered by an expert, like the January 2013 NVP valuation, does not open the door to evidence at trial.

THE COURT: Well, Mr. McCray wasn't an expert. He was a fact witness this morning. That's where the door was potentially opened, in my view.

MR. GREENBERG: Your Honor, respectfully, I believe we were talking about the two Government exhibits that were the subject of briefing?

THE COURT: No. The two government exhibits are offered not for substantive evidences on probable cause or malice, they are to show impeachment and damages. Two entirely different subjects. So let's just hold back. Let's rule on the two exhibits first, then we'll talk about opening doors.

MS. FARBER: Your Honor, I also circulated an additional case, which I have in hard copy that relates specifically to the 302s and not the opening of the doors. I don't know if you'd like that cite or a hard copy of the case before we recess.

1 **THE COURT:** Just go ahead and give us a hard copy.

2 Let's take a 15-minute recess, and we'll come back and
3 hear argument on all of these issues.

4 **MR. GREENBERG:** Your Honor, I have hard copies of the
5 case I mentioned, if you would like.

6 **THE COURT:** Yes, sir. We'll get those. Thank you.

7 Mr. Greenberg, I now understand the case you cited talks
8 about opening the door with 302s. I understand that --

9 **MR. GREENBERG:** Not specifically 302s, but more
10 broadly. I'll leave it at that for now.

11 **THE COURT:** Very good. Thank you.

12 We'll be in recess for 15 minutes.

13 **THE CLERK:** All rise. This Honorable Court is now in
14 recess.

15 (Whereupon, a recess was taken from 2:37 p.m. to
16 2:56 p.m.)

17 **THE CLERK:** All rise. This Honorable Court resumes in
18 session.

19 **THE COURT:** Be seated.

20 All right. Let's talk about Government proposed
21 Exhibits 59 and 71. These are 302 statements. One was done,
22 prepared by Agent Mosley of Daniel Walker, who was another
23 pharmacist; the other was prepared by Ms. Lating, Ryan Harris,
24 who was an investor, banker-type individual who looked at
25 financing the Plaintiff's business.

1 Both of these are offered as public records under the
2 public records exception to the hearsay rule. We heard brief
3 debate about it. We looked at the authorities. There's
4 surprisingly little authority on whether the 302s come in as a
5 public record in a civil case.

6 But I have decided that these two documents do qualify as
7 a public record because they were made by a public official
8 under duty to report. But that doesn't answer the question.
9 That just gets us to the first level hearsay. The report
10 itself is a public record, over the objection of the Plaintiff.

11 But within the 302s, we have one layer of hearsay on one
12 of them, and two layers on the other one. And that's where the
13 hard questions come in about whether those subsidiary
14 statements satisfy a hearsay exception.

15 So let's first talk about the Walker interview.

16 He was another pharmacist that, at one time, worked for
17 the Plaintiff, right, and then opened a competing business? Or
18 am I wrong on that?

19 **MS. FARBER:** Whether it's a competing business is
20 disputed. Pam Arnold testified that what would make it a
21 competing business, that was her -- her testimony was that it
22 wasn't necessarily competing. But in general terms, that's
23 correct, Your Honor.

24 **THE COURT:** All right. And let me say, I got ahead of
25 myself.

1 The public records exception, as well as the business
2 records exception has a proviso at the very bottom that none of
3 the other hearsay exceptions requires; and that is, even if the
4 bullet points or the boxes are all checked to qualify as a
5 public record, it can still be kept out if the opponent shows
6 that the circumstances of its production suggests
7 untrustworthiness, or words to that effect.

8 The argument is made that Mr. Mosley and Ms. Lating, their
9 testimony should be suspect based on the totality of what is in
10 the record in this case. I do not find that the Plaintiff has
11 carried its burden of proving a lack of trustworthiness in the
12 preparation of the document.

13 So as I just said, the first level of hearsay is
14 satisfied, these are public records.

15 Now, as to the Walker statement, one thing he told the
16 interviewing officer was that Mr. Annappareddy was aware of the
17 investigation. That's hearsay. Where's the exception? How
18 does that come in?

19 **MS. FARBER:** Your Honor, the exception to the hearsay
20 rule there is that it is -- it's for impeachment purposes
21 there, Your Honor. So the testimony --

22 **THE COURT:** Yes, it's offered for impeachment. But
23 it's still an out-of-court statement by declarant. And it
24 meets the definition of hearsay. It's offered for its truth.
25 If it's not being offered for the truth, it's not impeaching

1 the Plaintiff. Help me with that. I'm just struggling with
2 it.

3 (Counsel conferring.)

4 **MS. FARBER:** Your Honor, we'll withdraw 59 at this
5 time. We'd -- we do believe that that statement is something
6 that can be gone into with Mr. Annappareddy --

7 **THE COURT:** All right. So it's withdrawn at this
8 time.

9 **MS. FARBER:** We'll withdraw at this time.

10 **THE COURT:** *In toto*. And there were some other things
11 we were going to come to, but you're taking down the whole
12 exhibit; is that correct?

13 **MS. FARBER:** Well, I think the other portion is
14 related to impeachment as well, I think. Those in 59 -- yeah,
15 in 59, what we're talking about there is impeachment material,
16 Your Honor. So we can withdraw it at this time.

17 **THE COURT:** All right. So 59 is officially withdrawn.

18 Then we come to 71. And this is a gentleman Ryan Harris,
19 who's a medical doctor, and he is associated with Northwest
20 Venture Partners NVP, in Palo Alto, California. And he was
21 interviewed telephonically and asked questions about the nature
22 of his relationship with Mr. Annappareddy and Pharmacare, and
23 he provided information about his tentative interest in
24 partnering with the Plaintiff or financing his business in some
25 respects, and ultimately decided not to. And then became

1 offended when he learned that Mr. Annappareddy had reported to
2 someone else that he was going to get involved with the
3 financing, and he ended up concluding that Mr. Annappareddy was
4 not a trustworthy person, not a truthful person.

5 I suggested the other day that not a truthful person
6 problem, hearsay problem, could be satisfied by 803(21). But
7 I'm not sure I'm correct on that. And here's why. If you look
8 at 803.21, it says: Reputation concerning character. It's a
9 hearsay exception if the testimony is a reputation among a
10 person's associates in the community concerning that person's
11 character. It does not include an opinion of an individual.

12 The other character rule that comes up earlier in the
13 Rules of Evidence talks about opinion and reputation, and most
14 time, either one can be brought in, in other cases. But here,
15 this hearsay exception is limited to a reputation in the
16 community. And I don't know that this witness, Mr. Harris,
17 talks about reputation.

18 **MR. GREENBERG:** Your Honor, I think that's exactly
19 right. And that's one of multiple reasons why that
20 Government's Exhibit 71 is inadmissible and it would be legal
21 error to admit it. There's -- Harris had no basis at any time
22 proffering an opinion about Mr. Annappareddy's reputation.

23 **THE COURT:** Well, he found out from someone else that
24 Mr. Annappareddy had lied about him being involved. That's a
25 basis, isn't it?

1 **MR. GREENBERG:** That's not reputation in the
2 community --

3 **THE COURT:** Well, that's not reputation, but he had a
4 reason -- he didn't just gin this up out of thin air. He had a
5 reason. But I think I'm agreeing with you, it's not
6 reputation, it's opinion.

7 **MR. GREENBERG:** It's opinion, not reputation, and the
8 opinion can only be offered if the witness actually testifies.

9 **THE COURT:** Well, I disagree with you, I read that in
10 your brief. But a hearsay declarant whose statement comes in
11 for the truth of the matter asserted is a witness, it's just
12 he's not on the witness stand in the courtroom. He can be
13 impeached by all the normal methods.

14 If someone makes a dying declaration, and it comes in as a
15 dying declaration hearsay exception, if he has a felony
16 conviction within the last 10 years, in it comes. Any
17 declarant can be impeached using all of the normal impeachment
18 methods odds. And so a declarant is a witness.

19 And if you need further authority, in the line of cases in
20 the Supreme Court dealing with confrontation -- the
21 confrontation clause, the *Crawford* line of decisions, the
22 Supreme Court then, in that case, in about 2002, tried to
23 untangle the confusion that existed about hearsay exceptions
24 vis-à-vis the confrontation clause in the Constitution. The
25 law was very muddled on what hearsay exception can come in.

1 And Justice Scalia wrote the opinion and said, let's wipe the
2 slate clean and start all over, and we're going to lay down the
3 law on confrontation clause issues.

4 And they started with proposition that the confrontation
5 clause talks about confronting witnesses against you. And
6 witnesses testify in court. And so Mr. Scalia said we're going
7 to develop a test whether or not the out-of-court statement is
8 testimonial or not. If it's testimonial, the confrontation
9 clause applies; if it's not, the confrontation clause does not
10 apply, you have to find a hearsay exception.

11 But the point is, clearly they said a hearsay declarant is
12 a witness. So I just respectfully disagree with that argument
13 by the Plaintiff.

14 But I'm still concerned about whether any of this needs to
15 come in.

16 **MR. EISER:** Your Honor, on this issue, the issue is
17 rebuttal evidence, not impeachment. The Plaintiff has put the
18 evidence in. Their expert damages report by Mr. Murphy,
19 says -- which they've already submitted to you, says on
20 Page 12, Paragraph 54, he's trying to --

21 **THE COURT:** Well, we're talking about damages -- I was
22 talking about his opinion about Mr. Annappareddy --

23 **MR. EISER:** I think it --

24 **THE COURT:** -- but all right. Let's move over to the
25 valuation issue, the expert issue now.

1 **MR. EISER:** I think there's an overlap, though,
2 because -- his -- here's Mr. Murphy, Plaintiff's expert, "The
3 other valuation considerations presented in Exhibit 3.0 provide
4 additional support for my equity value attributable to the
5 subject interest grounded of 32.5 million as the NVP proposal
6 presented Pharmacare's pre-money equity values ranging from
7 between 40 and 50 million."

8 So he's referencing the NVP report, which says Pharmacare
9 is worth 40 to 50 million. Now, when he went and did his work,
10 he didn't use the NVP proposal, he used his own and he came up
11 with 30 million. But he's still -- there he is, referring to
12 it, relying on it. So we're simply rebutting it with the
13 author of the NVP proposal, saying, "I was not going to do
14 business with that guy, I didn't trust him." He's not talking
15 about his reputation, he's talking about why "I'm not going to
16 do business with him" --

17 **THE COURT:** But it's still not an out-of-court
18 statement to the effect, offered for its truth, isn't it?

19 I'm struggle with that.

20 **MR. EISER:** Well, we're impeaching their expert with
21 Plaintiff's claim. And rebutting it, as well.

22 **MR. GREENBERG:** Well, Your Honor, first of all --
23 I'm sorry.

24 Your Honor, I apologize.

25 There's multiple levels of hearsay that each level of

1 which is inadmissible in this Government's Exhibit 71. It's
2 not just Harris's purported statement about what he heard from
3 one person, not from -- not about reputation in the community,
4 what he purportedly heard from one person. It's also
5 asserting -- it's also taking that third person's statement for
6 the truth of the matter asserted. So there's multiple levels
7 of admissible hearsay.

8 With respect to the expert report, the Fourth Circuit's
9 opinion in the case that I sent during the lunch break makes
10 clear that materials -- the fact that materials were produced
11 in discovery that are not otherwise admissible don't open the
12 door to anything. So this whole notion that the -- opposite --
13 as you know, Your Honor, an expert can rely on things that are
14 not in evidence.

15 **THE COURT:** Yes.

16 **MR. GREENBERG:** So the mere fact that Mr. Murphy
17 relied on the January 2013 NVP valuation does not open the door
18 to this multiple hearsay exception, multiple inadmissible
19 hearsay document in a 302, that's in Government's 71.

20 If I can, please, just say a little about the *Bakkebo*
21 case, because we do believe this is controlling. And it's
22 especially controlling in light of what just happened before
23 the break, when Mr. Dyke was testifying and he was asked
24 questions by Government counsel about an email with the Excel
25 file attached. And he was asked about the initials in the

1 attachment to that Excel file. And Your Honor ruled that that
2 line of questions, even though it was referred during the trial
3 to the Excel file and the purported author of the Excel file,
4 the substance of the Excel file, that didn't open the door. If
5 that doesn't open the door, then surely, surely a document
6 considered by an expert that's not otherwise admissible does
7 not open the door.

8 Now, the *Bakkebo* case, it says, I quote, on Page 96, "it
9 seems elementary that the mere discussion of a subject in
10 discovery does not serve to open the door to trial evidence
11 concerning that same matter because a litigant is not free to
12 withhold information in discovery on the ground that it would
13 be inadmissible at trial." And then cites Federal Rule of
14 Civil Procedure 26(b)(1).

15 And then it also distinguishes, Your Honor, in the *Bakkebo*
16 case, Federal Rules of Evidence 404(b).

17 Now, another issue here is waiver. The parties briefed
18 the business valuation expert's opinions. The Government, in
19 its brief, didn't say a word about Mr. Murphy's opinion opening
20 the door to anything, let alone his reliance --

21 **THE COURT:** Well, just because they didn't object to
22 the written report coming in doesn't mean they can't challenge
23 it.

24 **MR. GREENBERG:** Oh, no, Your Honor, maybe I wasn't
25 clear. I meant in their brief, addressing Mr. Murphy's

1 opinion, the Government never suggested that the mere fact that
2 he considered the January 2013 NVP valuation of Pharmacare at
3 something like \$50 million opened the door, and even if they
4 had made that argument, that would violate the Fourth Circuit's
5 ruling in *Bakkebo*. We believe that opinion is controlling
6 here, and that admitting Government's Exhibit 71 would be just
7 an opening-the-door issue illegal error, and it would also be
8 illegal error for the concerns Your Honor expressed about
9 multiple levels of hearsay.

10 **THE COURT:** All right.

11 **MS. FARBER:** Three points on that, Your Honor.

12 First is that *Bakkebo* doesn't apply in this case. And
13 Your Honor and Mr. Miller, you can read this for yourselves.
14 But starting on Page 296, continuing on a little bit from the
15 selection that Plaintiff counsel raised, is the quote, "At
16 trial, one of the parties did not proffer the text," the
17 disputed evidence. They didn't proffer it. It was just in
18 discovery.

19 That's not what we have here. This has been presented to
20 the Court, it's ECF No. 343 --

21 **THE COURT:** That's why I couldn't wrap my brain around
22 why that case applied here.

23 **MS. FARBER:** It's not. You're exactly right, Your
24 Honor, it doesn't apply. That deals with information that came
25 out during discovery that was not given to the Court to

1 consider at trial. That's not the universe that we're in here.

2 Your Honor has been given Stan Murphy's expert report,
3 which does attach and incorporate the NVP analysis. So you can
4 set *Bakkebo* aside. That doesn't apply.

5 **THE COURT:** Well, let me ask you this: Why couldn't
6 these two gentlemen be called in the flesh, as live witnesses?

7 **MS. FARBER:** That was an agreement that the parties
8 made in an effort to streamline things a little bit. I think
9 we were trying to be mindful of Plaintiff's 30 hours. We
10 thought the damages analysis might be something that could be
11 sufficiently addressed on the papers. So that was our effort
12 to try to streamline things a bit. So that might have been an
13 error now that we're talking about it here, but that would have
14 been the parties' error, that was an agreement that we both
15 came up together in the interest of the Court's time and the
16 Plaintiff's time.

17 Briefly on this case of whether we waived an argument
18 because we didn't raise it in a trial brief that was meant to
19 summarize a couple of the issues relevant to the damages
20 analysis, I don't think there's any authority for that, that
21 statement that we had to make every possible counter-argument
22 against Plaintiff's damages report in a trial brief that we
23 just chose to append to an expert analysis. We still have
24 trial where we can bring out evidence through other witnesses
25 that, you know, would reflect on Plaintiff's purported damages

1 analysis.

2 And then the third point I wanted to revisit, and I was a
3 bit flummoxed when Your Honor asked me about this a little bit
4 ago, is the point about whether Mr. Harris's statements about
5 Mr. Annappareddy being a chronic liar, et cetera, really fall
6 under reputation if it's just one man's opinion, is that truly
7 reputation evidence under 803(21). I would direct the Court to
8 Pages 5 to 6 of Defense Exhibit 71, where we can see that
9 Dr. Harris is as a consulting with others, that his statements
10 about Annappareddy, his trustworthiness, his lying, are also
11 based on consultation with Don Hoyt, who is a former employee
12 of Pharmacare. So now we have multiple people --

13 **THE COURT:** You said Pages 5 and 6?

14 **MS. FARBER:** I believe it's Defense 71 at Pages 5 and
15 6. That should mention conversations with Don Hoyt, if I'm not
16 mistaken, Your Honor.

17 **THE COURT:** Bear with us just a minute.

18 **MS. FARBER:** Sure. I'll try to pull it up on online
19 as well, in case I'm wrong.

20 Yep, there it is, Your Honor.

21 Thank you, sir.

22 If you look on the left side of the screen, right in the
23 middle there, it says, "Hoyt called NVP." Harris did call
24 Hoyt, and they started talking about Annappareddy. And Hoyt
25 stated that he's going to quit Pharmacare. And then if you

1 scroll down, "Hoyt responded that he just found out and had no
2 further details. This made Harris feel uncomfortable," you
3 know, "this information about Pharmacare growing rapidly for
4 profit. Harris final thought after talking to Hoyt was that he
5 was busy and Pharmacare deal was not worthy of his time
6 anymore."

7 Then we have more about a background check. So here, you
8 know, the idea behind the hearsay exception for reputation is
9 that it should encompass -- it should encompass hearsay of
10 several people in the community.

11 **THE COURT:** To me, a reputation is the collective
12 gossip in the community.

13 **MS. FARBER:** Exactly. It's represent --

14 **THE COURT:** It's collective hearsay as opposed to one
15 man's opinion or one man's opinion based on what one other
16 man's opinion was. I'm just not sure that gets to be
17 reputation.

18 **MS. FARBER:** Well, Your Honor, we would argue that the
19 fact that -- Harris saying he's a chronic liar, he is
20 untrustworthy, based on these two pages of the 302, that
21 information came from more than one member of the community, of
22 Annappareddy's associates, and that is what is contemplated in
23 803(21), the hearsay exception.

24 **MR. GREENBERG:** Your Honor, may I respond to --

25 **THE COURT:** Go ahead.

1 **MR. GREENBERG:** So, first of all, I may be forgetting
2 something, it's entirely possible, but I am not aware of any
3 agreement that they would not call Harris or these third
4 parties from wherever. I don't even think they raised the
5 issue with us. I think this statement about an agreement is
6 mistaken. I don't even know -- I'm not aware of that, and I
7 think I would be aware of it if it had happened. So that's one
8 point.

9 Your Honor is absolutely right. Reputation is the
10 collective gossip in the community. Mr. Annappareddy didn't
11 live in Silicon Valley where NVP was and Ryan Harris was and
12 this -- you know -- and whatever Hoyt said, it wasn't anything
13 about reputation in the community. And that's another level of
14 hearsay, anyway. So it doesn't get past the Harris problem,
15 the fact that Harris's statement is inadmissible hearsay.

16 And then there's some other stuff about -- I mean, this
17 would be legal error for multiple reasons, Your Honor. And the
18 Government is inviting that error, and it's doing so based on a
19 one -- I mean, they can -- if they wanted to introduce this
20 evidence, if Mr. Harris really believes what Lating, Maura
21 Lating, the author of the materially false Lating affidavit,
22 wrote that he said, if the Government believed that was true,
23 they could have put Ryan Harris on their witness list. They
24 didn't. That was a decision they made, and they are now --
25 they are now facing the consequences under the law of that

1 decision.

2 There is just no universe in which statements out of
3 court, multiple levels of hearsay by someone all over in
4 California, says anything about Mr. Annappareddy's reputation
5 in Maryland or, let alone, in his community.

6 Now, I do want to talk briefly about the *Bakkebo* case. I
7 think counsel was confused in talking about how -- reading part
8 of a sentence saying at trial the FDIC did not proffer the text
9 of the indictment. I'm not even sure where that was pertinent
10 because that's in the discussion of Rule 404(b), not in the
11 discussion of the opening-the-door issue.

12 So, Your Honor, I think I've adequately covered this
13 issue.

14 I do want to note, though, just for the record, that we
15 object to any ruling -- I'm not sure the Court has made a
16 conclusive ruling, but it sort of sounded like the Court had,
17 that there's not sufficient evidence to establish
18 untrustworthiness given the --

19 **THE COURT:** I've ruled on that, you lost on that. But
20 you've already won on the second level of hearsay.

21 **MR. GREENBERG:** I'm just preserving the objection.

22 **THE COURT:** You're preserved.

23 **MR. GREENBERG:** But going to sort of the more
24 fundamental points, we're talking about an expert report. You
25 know, the fact that Mr. Murphy considered this January 2013

1 valuation, to use that as somehow a loophole to bring in this
2 multilevel hearsay statement from some guy in California that
3 they decided not to call at trial, that doesn't -- that just --
4 the law doesn't allow that.

5 **MS. FARBER:** Your Honor, just briefly to correct the
6 record, Mr. Greenberg noted that he's not sure where this idea
7 that we were submitting the experts on paper came from, he's
8 not aware of any kind of an agreement. I have -- I'm looking
9 at an email on April 3rd, 2023 --

10 **THE COURT:** Hold on one second.

11 Go ahead.

12 **MS. FARBER:** So on April 3rd, 2023, at 1:59 p.m.,
13 Stuart Paynter, who was previously counsel for Plaintiff, sent
14 an email to Matthew Phelps; to myself, Melissa Farber; to Larry
15 Eiser; Joshua Greenberg; and Lisa Goodwin, saying, "Matt in
16 light of judge's order setting strict time limits, we propose
17 that the parties agree to submit experts' testimony on
18 damages" -- quote -- "on the papers. Specifically, we propose
19 that both parties submit their damages report together with a
20 short 10-page trial brief."

21 So that's where that came from. That was Plaintiff's
22 counsel's suggestions.

23 **THE COURT:** As I said, the report's come in in written
24 form, the expert opinion comes in in written form without a
25 hearsay objection, but I don't know that that means that all

1 other it inadmissible evidence comes in because of that
2 agreement.

3 **MS. FARBER:** No, that's what I'm saying. I'm just
4 saying -- Your Honor had asked why we didn't just call these
5 witnesses, and I responded that was an agreement that the
6 parties had come to. My understanding of Mr. Greenberg's
7 response is he's not aware of any kind of agreement we came to
8 not call these experts. Perhaps I misunderstood. And I'm
9 correcting the record with the communication regarding the
10 parties' agreement.

11 **THE COURT:** All right. Hold on.

12 **MR. GREENBERG:** Your Honor --

13 **THE COURT:** I was asking why Mr. Harris couldn't be
14 called, not the expert.

15 **MS. FARBER:** Oh, I apologize. I misunderstood. Okay.
16 We did not have an agreement about Harris. The agreement
17 was about the experts.

18 **THE COURT:** Well, let me say, on Plaintiff's
19 Exhibit 71, that is a interview by Ms. Lating by Ryan Harris,
20 I'm going to sustain the Plaintiff's objection to the hearsay
21 insofar as it pertains to the witness Mr. Harris's opinion to
22 Mr. Annappareddy's trustworthiness or truthfulness.

23 As to the other part of this going to the business
24 investment opportunity, I think I'm going to hold off on that
25 until we hear closing argument and after I've had a chance to

1 read, very carefully, those expert reports. I've just skimmed
2 them, honestly. In preparing to come up here, we tried to read
3 everything we could. But I only devoted a small amount of time
4 to those reports, and I just skimmed them. So I'll read those
5 when we go back to South Carolina. And when we argue the case,
6 after all of the evidence is in, we'll come back to the issue
7 as to whether Exhibit 71 or part of it can come in to impeach,
8 I guess, the Plaintiff's damages expert.

9 All right. So with that, we now come to the somewhat
10 related question.

11 Mr. Greenberg, I'll be honest with you, it seems to me
12 that when Mr. McCray got on the stand, once he passed the line
13 of the Lating affidavit, everything he said needs to be kept
14 out. I don't think any doors have been opened. The Plaintiff
15 moved *in limine* before trial to keep out any evidence of
16 post-affidavit information, conduct, and so forth. And I think
17 we need to go back and strike and not consider everything that
18 Mr. McCray said post indictment.

19 Tell me why I'm wrong.

20 **MR. GREENBERG:** Your Honor, respectfully --

21 **THE COURT:** And second question is, if it comes in,
22 why you've not opened the door for all kinds of other
23 information the Government is sitting on coming in as well?
24 Two questions.

25 **MR. GREENBERG:** Okay. Well, Your Honor, first of all,

1 the motion *in limine* we filed demonstrated that post
2 indictment -- after-acquired evidence, to use the Court's
3 language, is not relevant to probable cause or malice.

4 Mr. McCray's testimony is different. And the reason it's
5 different is that it is admissible under Federal Rule of
6 Evidence 404(b) to rebut the allegation from multiple
7 government witnesses in their case in chief, asking these
8 former law enforcement officers, "Didn't you believe there was
9 probable cause that there was fraud at Pharmacare?" And, you
10 know, they didn't limit it by time frame.

11 You know, they've made in their argument, in the opening
12 statement, and they've gotten it from some of their own witness
13 about, oh, Mr. Annappareddy wasn't innocent, there was tons of
14 evidence of fraud.

15 Mr. McCray is rebutting that. That's one. He's rebutting
16 it.

17 And under Rule 404(b), post-indictment evidence is
18 admissible to show motive, intent, or common plan or scheme,
19 and the case *Bakkebo* --

20 **THE COURT:** Other acts of misconduct are admissible to
21 show a common plan or scheme. Other acts of misconduct. And
22 also, isn't motive another word for malice?

23 **MR. GREENBERG:** I think that's a reasonably fair --
24 well, I mean, I think it depends on the exact -- but motive is
25 certainly highly relevant to malice. But the motive here is

1 admissible under -- it's 404(b).

2 And my point about *Bakkebo*, Your Honor, is simply that it
3 distinguishes the relevance inquiry from the 404(b) inquiry;
4 that's the same Fourth Circuit opinion we've been talking
5 about.

6 Now, we need to just look at Rule 404(b) itself. It
7 actually is not respectfully limited to bad acts. It says in
8 subsection B1: Evidence of any other crime, wrong or act.

9 **THE COURT:** Right. Other, other -- the typical
10 example in the evidence textbook is, someone is charged with
11 bank robbery. The prosecution -- and the bank was robbed at
12 2:30 in the afternoon. The prosecution wants to show that at
13 9:30 that morning, the Defendant robbed a green Mustang, and a
14 green Mustang was used as the getaway car in the bank robbery.
15 The earlier crime, the earlier wrong comes in not to show bad
16 character, to show that people who steal cars also rob banks,
17 it comes in to show identity. Another act that comes in to
18 show identity. Or another act that comes in to show any of
19 these other things, motive, plan and so forth.

20 I don't know if I agree with you on 404(b). I just don't
21 know -- I'll hear you out. Go ahead.

22 **MR. GREENBERG:** So, Your Honor, the plain language of
23 subsection (b)(1) of Rule 404 says -- uses the word "act." It
24 doesn't say bad act. It doesn't say wrongful.

25 **THE COURT:** Right. Doesn't have to be a crime.

1 Doesn't have to be criminal.

2 **MR. GREENBERG:** Any act.

3 **THE COURT:** All right.

4 **MR. GREENBERG:** And the behavior that Mr. McCray
5 testified he saw from now former Special Agent Mosley, that is
6 an act that shows malice. It shows that Special Agent Mosley
7 didn't want the truth, he just wanted a conviction, regardless.
8 That's malice.

9 **THE COURT:** So you're offering post-indictment
10 evidence to show malice. Tell me how that doesn't open the
11 door to the Government coming back with what they had.

12 **MR. GREENBERG:** Well, just to be clear, I want to make
13 sure I'm clear on this. Under rule 404(b) we're opening --
14 we're offering it, rather. Not under any other rule.

15 **THE COURT:** I understand. But if I open the gates for
16 you to show post-indictment conduct to show malice, how can I
17 restrict the Government from showing post-indictment conduct to
18 prove malice? That's what I'm struggling with.

19 **MS. FARBER:** Also, Your Honor, 404(b) allows evidence
20 for absence of mistake, which that's the whole guilt or
21 innocent question, and then we now are having a whole trial on
22 guilt or innocence.

23 **MR. GREENBERG:** So, Your Honor, the answer to your
24 question about why this doesn't open the door is that we offer
25 Mr. McCray's testimony, to the extent it related to

1 post-indictment events, he also talked about -- testified about
2 preindictment events, but --

3 **THE COURT:** What he said preindictment, I have no
4 problem with. I'm just asking whether we need to stop it and
5 not consider anything post indictment.

6 **MR. GREENBERG:** Your Honor, I understand, I'm just
7 trying to clarify for the record. I hear Your Honor's
8 statement.

9 The point, Your Honor, is that we offered, with respect to
10 the February 2014 incident with Mosley in the elevator and
11 Mosley's visible facial reaction, his, you know, the way he
12 reacted when Mr. McCray told Mosley, you know, basically that
13 Mr. Annappareddy was innocent or didn't incriminate him or
14 something to that effect, I can't remember the exact words.
15 That's Rule 404(b) evidence.

16 The Government, in contrast, they're not making any 404(b)
17 argument. They are arguing that post-indictment evidence is
18 relevant for various purposes. They're not arguing that
19 post-indictment evidence is admissible to show any of the
20 purposes in Rule 404(b). That's the distinction, and that's
21 why it doesn't open the door.

22 **MR. PHELPS:** We can, Your Honor. Your Honor, it's
23 hard to have this discussion in kind of the narrow concept in
24 the way it's been presented. I think we need to take a step
25 back and talk about this case and the schedule and the order.

1 We had to disclose our exhibits. We had to disclose our
2 witnesses. It all had to be filed with the Court. And we had
3 the benefit of the Court's rulings on the various motions *in*
4 *limine* that were filed. And we had a time limit. And so we
5 could calibrate what our case was going to be. And it was
6 obviously calibrated very, very heavily towards the search
7 warrant in the indictment.

8 Your Honor, when we just tried to get these 302s admitted,
9 when we tried --

10 **THE COURT:** That was their first -- Plaintiff's first
11 objection was it was post indictment.

12 **MR. PHELPS:** Correct. And all we heard, Your Honor,
13 for all of these witnesses, is that if we so much as lay the
14 foundation just to get the evidence admitted and not even ask a
15 question, we're going to create a mini trial upon mini trial
16 upon mini trial, and they're going to -- they're not going to
17 be able to pursue their case and their precious 30 hours.

18 And then we get witnesses with virtually no notice, never
19 disclosed, that want to present evidence that no one has ever
20 heard before, and it does open the floodgates, Your Honor.

21 And to be perfectly honest with Your Honor, are we --
22 could we hypothetically live with Vipin Patel's testimony that
23 he lied to a federal judge and a federal grand jury; yeah, we
24 could live with it. Could we live with Mr. McCray saying that
25 Mr. Annappareddy was a liar and he wanted to wear a tape

1 recorder when he spoke to him and that Robert Mosley wanted to
2 pursue justice, could we hypothetically live with that; okay,
3 fine. But Your Honor, what comes next? I'm not confident that
4 we're done with the unknown witnesses.

5 And so you're right, Your Honor, there's a whole lot of
6 404(b). If we want to talk about other acts to show conformity
7 therewith, we've got a whole lot of that. But that's not what
8 we planned to do when we set the schedule and the 30 hours and
9 the witness list and the exhibit list. We're here having this
10 discussion because they're dumping new evidence, new witnesses
11 with virtually no notice. That's why we're having this
12 discussion now.

13 **THE COURT:** All right. Mr. Flowers.

14 **MR. FLOWERS:** Thank you, Your Honor.

15 I think we need to go back to first principles, too.
16 There is one place where I can join hands with my opposing
17 counsel. First principles are this. We put on a case, they
18 put on a counter-case, and because we're the Plaintiff, the
19 only one with the burden, we get to rebut.

20 They have put on witness after witness after witness to
21 say that this man is a liar. You look at --

22 **THE COURT:** Witness, after witness, after witness,
23 that's three. I don't remember three. Who is -- what evidence
24 has come in so far that he's a liar?

25 **MR. FLOWERS:** Well, for example, you had

1 Agent Gutberlet talk about they had more than probable cause
2 outside of the four corners of the affidavit.

3 **THE COURT:** Probable cause is not the same thing as
4 saying Mr. Annappareddy is a liar.

5 **MR. FLOWERS:** Certainly. Because the affidavit is an
6 affidavit that says he's a fraudster. Fraudster is just
7 another word for liar. And they said they had evidence --

8 **THE COURT:** Surely, you can't say you were surprised
9 by that development in this case. That's what the whole case
10 is about.

11 **MR. FLOWERS:** Well, we were surprised. I'll tell you
12 why. Because what they could have done is just say, "Hey,
13 we're going to focus on the probable cause in this affidavit
14 and demonstrate to the Court why there's probable cause in this
15 affidavit."

16 Instead, what they have done is they have opened the
17 floodgates to say, "There was so much probable cause circling
18 this affidavit, and we've had to kind of shoot down that
19 constellation of probable cause which has circled the
20 affidavit."

21 I said there were three witness. You stopped me at one
22 with Laurie Gutberlet.

23 Witness number two was Agent Maura Lating who got up on
24 the stand who talked about there was so much probable cause and
25 there were so many drafts of the affidavit because there was so

1 much probable cause, they had to figure out which part of the
2 probable cause, which part of the fraud they were going to
3 include in the affidavit, right. All of these things about
4 Mr. Annappareddy running some type of a slave plantation with
5 Indian people. Why? Because he's underpaying them. Why?
6 Because he's engaged in a fraudulent operation, right. That
7 was Laura Lating.

8 Then they didn't stop there, they brought you Robert
9 Mosley. Robert Mosley went on and talked about --

10 **THE COURT:** Your side called most of those witnesses,
11 didn't they?

12 **MR. FLOWERS:** Well, we called them to cross them, and
13 we didn't cross them on things outside the affidavit. They
14 brought them in their case. They're on both witness lists.
15 They brought them in their case to talk about, again, things
16 outside of the affidavit. So that's why we had to rebut that
17 information. And that's why, Your Honor, we can't put our
18 witnesses on a witness list. We don't know how they're going
19 to try this case. We learned how they were going to try this
20 case in day one in opening. When they said, "You will only
21 hear, Judge Anderson, from Mr. Reddy Annappareddy that there
22 was no probable cause." And then they had a list of people
23 that they said, "These are the people who are going to tell you
24 that there was probable cause." And the way that they have
25 told us -- we should just grab the Government's opening

1 statement. The way they told us was to call the witnesses and
2 talk about all of the probable cause outside of the -- outside
3 of the affidavit.

4 So that is why, Your Honor. We're not here trying to play
5 games. We're here trying to -- they say "X," we've got to say
6 "not X," right.

7 **THE COURT:** All right. Y'all haven't answered my
8 question that if I agree with you that 404(b) should let in the
9 McCray testimony post indictment, why that doesn't open the
10 door to all of the other stuff the Government has; the smoking
11 gun email, the forged delivery receipts, et cetera, et cetera.

12 **MR. FLOWERS:** I'll tell you exactly why, Your Honor.
13 Because the Government doesn't walk into this courtroom with a
14 burden of proof. We've got to prove malice, the Government
15 doesn't, right. 404(b) deals with -- as the Court has so very
16 well explained, one of the things you can use 404(b) for is
17 intent, right. And so we're showing that they had the intent;
18 in other words, they engaged in malicious misconduct when they
19 created the affidavit.

20 So -- again, so that doesn't open the door and what I
21 think -- and, again, I blame myself for not being a good enough
22 lawyer to explain that there are separate and distinct lanes
23 under which you operate and bring in evidence.

24 In lane number one, we're bringing in, for example, Vipin
25 Patel, Pragna Patel, and Ernest McCray to rebut what they have

1 said in their case in chief. That's lane number one, separate
2 and apart. We don't even get to 404(b). Just on rebuttal
3 alone, they say "X," we're saying "not X" by virtue of these
4 witnesses. So that's lane number one. We win there. We don't
5 even have to get to Rule 404(b).

6 But we do get to Rule 404(b) because, as the Court is very
7 well aware, malice or intent, as the Court's clerk, I think,
8 correctly suggests, it's -- it's intent, it's part of 404(b),
9 and we're bringing in the McCray evidence to rebut -- or,
10 rather, to prove up that these agents engaged in malicious
11 misconduct.

12 So that doesn't necessarily open the door to anything
13 because we're bringing it in for a specific use under
14 Rule 404(b).

15 They haven't argued that there's another way that they
16 should be able to bring it in. I'd welcome that argument.
17 We'd like to brief it, right. But under Rule 404(b), again,
18 we're allowed to bring in that type of evidence.

19 Now, in the criminal context --

20 **THE COURT:** The motion *in limine* filed by the
21 Plaintiff's side of the case to keep out post-indictment
22 information did not mention this exception, this giant
23 exception of 404(b).

24 **MR. FLOWERS:** Couple things. The motion *in limine*,
25 again, that was in another lane, that was Rule 401 and 402

1 dealing with relevance.

2 **THE COURT:** All right.

3 **MR. FLOWERS:** So that's why that motion *in limine* --
4 again, you have to look at that motion *in limine* and keep it in
5 its proper lane and don't mix the lanes. And I think what has
6 happened here -- and, again, I fault myself for not being clear
7 enough -- is that you've got to look at each lane separately.
8 404(1), 404(2) [sic] relevance, that was what the motion *in*
9 *limine* was about. As we got into trial and we saw how they
10 were going to defend this case, now we're talking about
11 rebuttal witnesses, and that is why we didn't put the rebuttal
12 witnesses on our witness list. Certainly we knew that these
13 issues were out here, but we thought -- given the Court's very
14 clear order, we're only dealing with two issues here, we
15 thought we were just going to be deal with the four corners of
16 the affidavit. They've gone far afield from the four corners
17 of that affidavit, and that's why we've got to rebut what they
18 have done. And again, we win on that issue.

19 Then we finally get to the third issue, which is the
20 404(b) issues. And again, you can't intermingle, you can't
21 co-mingle these issues. And on 404(b), when you look at
22 intent, we're able to put on evidence, such as that you heard
23 from Mr. McCray, that shows that agent's Lating and Mosley
24 maliciously engaged in misconduct. And you saw, again, perfect
25 example is, again, how Mr. McCray was able to explain that in

1 the elevator, when he tells Agent Mosley, "Hey, this man is
2 innocent," the smirk that Agent Mosley put on his face and
3 said, "No, no, I am somehow going after justice," and I put
4 "justice" in air quotes. So that, again, shows in the face of
5 knowing that this person was innocent -- you know, and again,
6 that's not to mention the fact that -- and I'll sit down on
7 this point, Your Honor, and pass, perhaps, the virtual mic over
8 to my opposing counsel -- that's not to mention the fact that
9 McCray and the Patel family, these agents knew about these
10 people back in 2013 and didn't interview them.

11 And, Judge Anderson, you need to be able to see and assess
12 for yourself was that a reasonable decision to make. The Court
13 has already said the law exactly correctly, that we are not
14 entitled under the Constitution to a perfect investigation.
15 We're not entitled to have every single witness interviewed,
16 right. But we certainly are entitled to a reasonable
17 investigation. And not interviewing the drivers who delivered
18 the medication in a Medicaid fraud case, that certainly was
19 unreasonable, that certainly doesn't rise to the level of
20 probable cause.

21 So, again, when you look at those three lanes, Your Honor,
22 we ought to win -- we believe we win in all three lanes, but
23 given the Court's ruling, I understand that -- again, lane one
24 with respect to what's relevant and stuff, perhaps we've lost
25 there. But certainly with respect to rebuttal evidence and,

1 finally, with respect to 404(b) evidence, we should win under
2 the law.

3 Thank you, Your Honor.

4 **THE COURT:** Before you sit down. When I ask you
5 why -- if I agree with you that 404(b) should let this in, why
6 that does not open the door to the prosecution bringing in
7 other information and going the other way and you said it's
8 because the Plaintiff has the burden of proof.

9 **MR. FLOWERS:** Right.

10 **THE COURT:** I don't understand how the burden of proof
11 can limit relevant evidence coming in. To me, that's mixing
12 apples and oranges.

13 **MR. FLOWERS:** Again, 404(b), as the Court is very well
14 aware, is not kind of this -- you can kind of use it for
15 anything, right. I mean, there are very kind of specific
16 reasons you can use 404(b). One is intent, right. The
17 Plaintiff -- or, rather, the defense, they don't have a burden
18 to have to prove intent. We do.

19 **THE COURT:** Right. But they have a day in court to
20 negate your evidence that shows intent.

21 **MR. FLOWERS:** Absolutely.

22 **THE COURT:** You can't tie their hands behind their
23 back to once you try to prove something to say, well, we agree
24 to cut off evidence at the indictment stage or the search
25 warrant stage.

1 **MR. FLOWERS:** Well --

2 **THE COURT:** Let me hear -- Mr. Phelps has been
3 patiently waiting.

4 Let me hear from the Government.

5 **MR. PHELPS:** Your Honor, there's been no accurate use
6 of the term "rebuttal" to this point based on how that term has
7 been defined by the Fourth Circuit. These are just witnesses
8 that are thrown on us at the last minute for case in chief
9 evidence. There's no surprises here. Hours, and hours, and
10 hours of depositions taken place in this case. We are not just
11 limited to the four corners of the affidavit. There is a
12 malice prong to the inquiry. You have to evaluate the agent's
13 intent. You have to know all of the evidence that they viewed.
14 So we're certainly not limited to the four corners of the
15 affidavit in terms of the admissible evidence in the case.

16 And Your Honor is 1,000 percent right; we have a boat load
17 of 404(b) evidence, if we're going to go there. We have tried
18 to calibrate our case appropriately based on four years of
19 preparation and Your Honor's pretrial rulings. And when they
20 drop on us what they did this morning, Your Honor, it throws it
21 all out of whack.

22 And I -- frankly, Your Honor, I don't have a good answer
23 for you right now on that. If they can continue to drop
24 witnesses on us at the last minute with no notice, I'm afraid
25 we have no choice but to go to all of these places that we had

1 decided not to go, based on what the case we understood to be
2 after four years of discovery.

3 **THE COURT:** All right.

4 **MR. FLOWERS:** If I could, Your Honor. In the criminal
5 context, where the stakes are much higher, the Government puts
6 on its case in chief, the defense gets to respond. In that
7 response, the defense gets one crack at it. The Government
8 gets to come on and put on its rebuttal case. And oftentimes,
9 when I've had the privilege to represent the accused and the
10 Government puts on witnesses that were not on any witness list,
11 but the argument is that they are responding to a defense that
12 I put up, court after court, trial level and appellate level,
13 upholds that. This is trial --

14 **THE COURT:** I haven't heard a good reason why
15 Mr. McCray was not listed as a witness.

16 **MR. FLOWERS:** Because he's rebuttal, Your Honor. He's
17 rebutting the fact that they said Mr. Annappareddy was
18 essentially running a slave plantation. He said not only was
19 Mr. Annappareddy not running a slave plantation, he was
20 providing those houses to his employees to help his employees
21 be better workers, including him, who is not even an Indian.
22 That is classic rebuttal. This is an issue --

23 **THE COURT:** All right. So at one point, it's 404(b);
24 and at another point, it's rebuttal? I mean, which is it?

25 **MR. FLOWERS:** It's both. It's both, Your Honor.

1 Well, the testimony of McCray covers both, right. For some
2 things, it's rebuttal; for example, rebutting the argument that
3 Mr. Annappareddy was engaged in fraud because he was running
4 this slave plantation. Mr. McCray, Pragna Patel, and also
5 Vipin Patel, they rebutted that argument. That's classic
6 rebuttal. They said, "X"; we said, "not X." That's rebuttal.
7 We went on that point alone.

8 And then, with respect to 404(b), also the Patels talked
9 about what they told Agent Lating and what they told
10 Agent Mosley, just like Mr. McCray today talked about what they
11 told Agent Lating and Agent Mosley, and, in the face of that
12 knowledge, they did nothing. That's 404(b). It doesn't open
13 the door because we've got to prove malice. We've got to prove
14 intent. If they want to use 404(b) in a way to prove something
15 else in the Rule, I'm not going to go tell them how to litigate
16 their case. But certainly, we can't be hamstrung and crippled
17 from being able to litigate our case under the Federal Rules of
18 Evidence.

19 I mean, that's -- so, again, it's not this just because we
20 follow the Federal Rules of Evidence, somehow they've got to be
21 able to -- it opens the door to things. No. We're saying
22 under Rule 404(b), we've got to deal with the malice or intent
23 issue. We're able to show that through these various
24 witnesses. So under Rule 404(b), that evidence comes in. And
25 again, I won't repeat myself about the rebuttal piece, but you

1 have two lanes, at the very least, that allows all of the
2 evidence to come in. And this idea that this is somehow unfair
3 to the Government, let's not forget, every witness we called,
4 they knew about, they put them in the grand jury.

5 **THE COURT:** Let me throw a hypothetical at you. One
6 of the cases in the evidence book I use in the course I teach,
7 dealing with 404(b), a gentleman is accused of murder. The
8 prosecution wants to show that he was having an affair with the
9 wife of the murder victim. Ordinarily, you don't allow in
10 character evidence that someone's having an illicit
11 relationship because that has nothing to do with whether you
12 murdered someone or not. It's improper use of character
13 evidence.

14 But 404(b) comes along and says it comes to show motive.
15 He had a motive kill the husband. He wanted the wife to
16 himself. So it comes in to show motive, okay. So we're past
17 404(b).

18 Are you saying in that case the other side would then be
19 hamstrung and couldn't try to put up evidence that there was no
20 affair at all? They're limited? Just because you got it in,
21 it stops right there; the other side, the door is not open to
22 the other side responding to that.

23 **MR. FLOWERS:** Well, certainly --

24 **THE COURT:** Well, that's what we have here.

25 **MR. FLOWERS:** Again, a couple things. Assuming your

1 fact pattern.

2 **THE COURT:** Suppose the other side wants to call three
3 teenage children who said, "My mother never had another man at
4 this house ever in her life. There was no affair." They want
5 to meet that 404(b) ground that it came in under. Are you
6 saying their hands are tied?

7 **MR. FLOWERS:** No, I'm not saying their hands are tied.

8 What I'm saying is I'm not going to sit here and litigate
9 for the other side. If they want to bring in evidence that is
10 very specific to the intent of Agent Mosley and Agent Lating,
11 fine. The problem that the Government has from day one of
12 their opening is they have brought in everything under the sun
13 that even smells of fraud. Not the specific intent for malice.

14 So, for example, if they wanted to bring back Mosley to
15 say, "Hey, when I told Mr. McCray that I was looking out for
16 justice, this is what it meant," as opposed to what Mr. McCray
17 said, there's no issue there.

18 The problem is, again, if they're going to just starting
19 bringing in emails from hither and yonder on issues that have
20 nothing to do with intent, the very narrow reason for which
21 we're bringing it in -- so that's -- that's -- that's what they
22 can do. And I hesitate to say more because again, they've got
23 I don't know how many lawyers over there and how many lawyers
24 back at the office. We're just a nimble team here, and I don't
25 want to litigate their case for them. But they can certainly

1 rebut that as the Court's hypothetical certainly suggests. But
2 it's a narrow rebuttal --

3 **THE COURT:** The door is now open for the Government to
4 come back with post-affidavit evidence.

5 **MR. FLOWERS:** Certainly under Rule 404(b). Our
6 evidence is post affidavit. But it's got to be narrow. It's
7 got to be narrow to intent.

8 **THE COURT:** Hold on one second.

9 (Court conferring.)

10 **THE COURT:** I'd like to take a recess and talk with my
11 law clerk. Anything Government wants to say before we break
12 up?

13 **MR. PHELPS:** Your Honor, I would just come back and
14 say that whatever is going on in here, we could have done this
15 three months ago, two months ago. And the reason this is a
16 problem now that we have to deal with is because this
17 insistence on an incorrect definition of what a rebuttal
18 witness is. Your Honor, what if Mr. Annappareddy testifies and
19 I ask one question. Guess what they get to do to that one
20 question, Your Honor. They get to rebut it. When is it gonna
21 end?

22 **MR. FLOWERS:** Your Honor, if I could, briefly. This
23 is trial. And you've -- we follow the Court's ruling on things
24 like what you can impeach on, whether the impeachment piece of
25 evidence comes in or not. The Court makes judgment calls all

1 the time, number one.

2 Number two, we are talking about the narrow issue of
3 intent. We are talking about out of four elements, not all
4 four, not even three, not even two, but one. And if they want
5 to bring in evidence that deals with the intent, what the --
6 Mosley and what Lating were thinking, in light of what
7 Mr. McCray said, in light of what Mr. Patel and Ms. Patel said,
8 we've got no issue on that.

9 The last thing I will say, I just want to make sure we're
10 clear, I've been saying over and over again that our case is to
11 be 30 hours. Mr. Annappareddy has been reminding me over and
12 over again that the email traffic that we had with your good
13 clerk there that we agreed to at least 35 hours, so I just want
14 to make sure that we are --

15 **THE COURT:** I said I'd give you five hours for
16 rebuttal.

17 **MR. FLOWERS:** Thank you, Your Honor.

18 **THE COURT:** Let's take a 15-minute recess.

19 **THE CLERK:** All rise. This Honorable Court is now in
20 recess.

21 (Whereupon, a recess was taken from 3:53 p.m. to
22 4:09 p.m.)

23 **THE CLERK:** All rise. This Honorable Court resumes in
24 session.

25 **THE COURT:** Be seated.

1 All right. On the question of the witness McCray's
2 testimony this morning that post-dates the date of the Lating
3 indictment, after hearing extensive argument from both sides
4 back and forth several times, carefully studying the applicable
5 law and the Rules of Evidence, I'm going to grant -- sustain
6 the Government's objection to any testimony by Mr. McCray that
7 deals with events post indictment. I find, specifically, that
8 Mr. McCray was not a rebuttal witness, he was a substantive
9 witness, and that might govern future witnesses as well.

10 To the extent the argument is made that the McCray
11 testimony comes in under 404(b), I just respectfully disagree.
12 Even if it did come in under 404(b), it would open the door to
13 the Government bringing in a good bit of evidence going back
14 the other way, post indictment. So the objection is sustained.

15 I would also note that the Plaintiff filed a pretrial
16 motion *in limine* to limit the evidence in this case to evidence
17 that predated the indictment -- or the affidavit, I should say.
18 We had an extensive pretrial conference by Zoom. After hearing
19 a full morning of argument, we came back after lunch and I
20 announced my ruling that I would not admit evidence post
21 indictment to show probable cause or malice. Neither party
22 asked to reconsider that, neither party had a problem with it
23 at the time. It was the Plaintiff's motion, as I said. And
24 then I structured the time parameters in this case based upon
25 that ruling. So that's my ruling.

1 Now, with that, I think that this mystery witness to be
2 disclosed before the end of business today so that the
3 Government can prepare for him, because I'm pretty sure it's
4 not going to be considered rebuttal. So I'll leave it to the
5 parties to do it before the close of business today.

6 Anything else before we adjourn until Monday?

7 **MR. PHELPS:** No, Your Honor. Thank you.

8 **THE COURT:** Let me just say, I'm not going to strike
9 it, the testimony. It's in the record. I'm just not going to
10 consider it.

11 **MR. FLOWERS:** Very well. And obviously, with the
12 Court's ruling, we understand it, we appreciate the Court
13 taking the time to make the ruling. We have nothing further.

14 **THE COURT:** With that, we bid you a good weekend. We
15 see you at 9:00 on Monday.

16 **MR. PHELPS:** 9:00 or 9:30, Your Honor?

17 **THE COURT:** Well, I just don't want to run out of time
18 next week.

19 When is the mystery witness going to be called?

20 **MR. FLOWERS:** I believe on Monday.

21 **THE COURT:** Before 5:00 today, the Government must be
22 informed of the identity of that new witness.

23 **MR. FLOWERS:** Very well.

24 And, Your Honor, given the Court's ruling, my
25 understanding that the testimony stays in the record, but

1 you're not going to consider it?

2 **THE COURT:** Right.

3 **MR. FLOWERS:** Then can you also --

4 **THE COURT:** And likewise, I won't consider any
5 cross-examination dealing with post-affidavit information.

6 **MR. FLOWERS:** Very well.

7 Then, given your Court's ruling today, is it possible that
8 we can get that time back on the clock since you're not going
9 to consider that testimony?

10 **THE COURT:** I don't think you're going to run out of
11 time anyway. Let's just wait and see if you need that time.

12 **MR. FLOWERS:** Very well.

13 **THE COURT:** You may not need it. What would it be,
14 probably about an hour added back to your clock?

15 **MR. FLOWERS:** I will defer to your very able clerk
16 there to let us know, but somewhere around there.

17 **THE COURT:** All right. If we do that -- if it becomes
18 an issue, I might add it back and, of course, I would add back
19 the Government's cross-examination time. But I don't think the
20 Government is going to use all their time allotted anyway.

21 So with that, have a nice weekend. We'll see you Monday
22 at 9:00.

23 **MR. FLOWERS:** Save travels, Your Honor.

24 **THE CLERK:** All rise? This Honorable Court is now
25 adjourned.

(Adjourned at 4:13 p.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, Ronda J. Thomas, Registered Merit Reporter, Certified Realtime Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 7th day of June 2023.

Ronda J. Thomas

Ronda J. Thomas, RMR, CRR
Federal Official Reporter

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